The Incorporated Accountants' Journal

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The Society of Incorporated Accountants and Auditors

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Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.

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Professional Notes.

BY kind permission of the Lord Mayor and Corporation, the Society of Incorporated Accountants and Auditors will give a dinner in the Guildhall, London, on Thursday, April 14th, 1932 (instead of December 3rd, 1931, as originally fixed). An alteration of the date was considered desirable having regard to the exigencies of the National position.

The proceedings of the meeting of the Council of the Society of Incorporated Accountants and Auditors held on November 19th were of more than usual interest and importance. The Council by unanimous vote tendered their best thanks to the President, Mr. Henry Morgan, for his evidence given at the trial of the Auditor of the Royal Mail Steam Packet Company. In the view of the Council, the President rendered to the profession as a whole a valuable service which was in accordance with the highest traditions and prestige of the Society. The resolution loses none of its force from the fact that it is passed more than three months after the conclusion of the trial, and when members of the Council have had every opportunity of considering the whole matter and all its implications.

Another important resolution was taken by the meeting. A Special Committee of the Council, consisting of Mr. Henry Morgan (President), Mr. E. Cassleton Elliott (Vice-President), Mr. C. Hewetson Nelson, Sir James Martin, and Mr. Thomas Keens, was appointed to consider the evidence adduced at the trial of the Chairman and Auditor of the Royal Mail Steam Packet Company, and to report to the Council whether, in the opinion of the Committee, any amendment of the law is deemed necessary, and what, if any, alteration of a voluntary character may be considered desirable in the compilation of company accounts or their certification by professional auditors.

At a recent address before the Incorporated Accountants' Students' Society of London on "The Stock Exchange and its Work," given by the President of the Students' Society, Sir Stephen Killik, Mr. R. J. Barrett, the Managing Editor of the *Financial Times*, who presided, remarked upon the beauty of Incorporated Accountants' Hall, in which the meeting took place. Mr. Barrett said that he was sure that the Hall must be a source of inspiration to the Society's students. In regard to Sir Stephen Killik, who is a member of the Committee of the Stock Exchange, it is not out of place to call to mind that in his younger days he took the necessary steps to obtain his Fellowship of the Society by passing the Incorporated Accountants Final examination with Honours.

In his speech at the dinner of the Incorporated Accountants' Hull and District Society, Mr. Henry Morgan expressed strong opposition to secret or hidden reserves in company accounts. He maintained that where these reserves were undisclosed it was impossible to present accounts which showed the correct position of a company's affairs. Mr. Morgan's speech is reported in another column, and will repay careful perusal. Wide attention has already been drawn to it.

In the House of Commons on November 24th, Mr. Louis Smith and Sir John Haslam asked the President of the Board of Trade whether, having regard to recent cases, he would not now consider amending the Companies Act of 1929 so as to render it more capable of protecting the public. The President of the Board of Trade (Mr. Runciman) said the Companies Act, 1929, which came into force on November 1st, 1929, incorporated the revisions which were made in the law by Parliament in 1928 after a thorough inquiry by a Departmental Committee. In these circumstances the time was hardly ripe for a fresh inquiry, but if his hon. Friends would let him have their suggestions on the particular points which they had in mind he would have them noted for investigation when the question of amending the Companies Act was under consideration.

With reference to our Professional Note last month regarding the adjustment of Income Tax deductions from ordinary dividends paid between April 5th last and the date of the passing of the second Finance Act, an actual case in point has been submitted to the Board of Inland Revenue. In the case referred to an ordinary dividend for the year ended March 31st, 1931, was paid in the month of May last and tax at the rate of 4s. 6d. in the £ was deducted. The question put to the Inland Revenue was whether the company had the discretion either to make no subsequent adjustment of tax, or to make up the deficiency of 6d. in the £ on the next payment of an ordinary dividend. The answer received was to the effect that the rate at which Income Tax should be deducted from a company's ordinary dividend is strictly a matter between the company and its shareholders, and any opinion expressed by the Board of Inland Revenue is not to be regarded as binding either party. Subject to this reservation the Board state that in their view there is no provision in law which could be invoked to authorise the recoupment from a subsequent dividend on *ordinary* shares of an under-deduction of tax from an earlier distribution. The net effect of this appears to be that the Board of Inland Revenue take no responsibility in the matter, but can find no specific legislative authority either for or against recoupment, which confirms the opinion expressed by us last month.

But take the case of a company which balances its accounts at December and pays an interim ordinary dividend in July or August with tax deducted at 4s. 6d. in the £. It would be rather unfair in the circumstances if the company when paying its final ordinary dividend could not make an adjustment, so that the tax for the whole year's dividend would be at the rate of 5s. If this were not permissible, the company would be in the position of paying tax on its profits at the 5s. rate and in the same income tax year deducting tax from shareholders at 4s. 6d. in the £ only, thus compelling the company to pay as final dividend, not a smaller amount in cash but a lower rate of dividend, which might affect the market value of the shares.

An interesting lecture was given to the Chartered Institute of Secretaries recently by Mr. J. S. Scrimgeour on the subject of Income Tax, in which he dealt at some length with the assessment of casual profits, the legal position as to which he said was very uncertain. He stated, however, that there was a case (*Shewin* v. *Barnes*) now coming on before the Court of Appeal which raised the whole question of the liability to assessment of profits of this character, and he hoped it would go to the House of Lords so that a final ruling might be obtained.

When is an Inspector of Taxes entitled to say he has discovered that a taxpayer has been undercharged or obtained an undue allowance which entitles the Inspector to make an additional first assessment upon him under the provisions of sect. 125 of the Income Tax Act, 1918? The question turns upon the meaning to be attached to the word "discovers." It is interesting, therefore, to see what meaning the Courts have placed upon the word in the cases which have come up for decision. Mr. Justice Bray said it was scarcely conceivable that the legislature should have expected or intended the Inspector to "discover" by means of legal evidence, and he concluded that the word "discovers" means "comes to the conclusion from the examination he makes and from any information he may choose to receive." Mr. Justice Avory's definition is still more concise. His interpretation is that the word "discovers" means "has reason to believe," while Mr. Justice Lush gives

the interpretation as indicating that he "finds" or "satisfies himself." The meanings of the term arrived at by these three Judges were referred to with approval by the Lord Chief Justice in the case of *Rex* v. *Bloomsbury Income Tax Commissioners* in the year 1915. It would thus appear that the word is not to be regarded as a legal term, but as conveying its ordinary dictionary meaning, and therefore placing a very wide discretion in the hands of the Inspector of Taxes.

In connection with the attempts which have been made to avoid Income Tax by having companies registered in Jersey, the Chief Magistrate of the Jersey Court recently stated that he would in future decline to register companies in that Island unless the solicitor engaged in the case was prepared to state definitely that it was purely a Jersey company with Jersey aims and objects. He said there was no doubt that in the past companies had been registered with no other object than the avoidance of United Kingdom taxation, and the Court was not prepared to lend its assistance to any such subterfuge.

The Referees Association, in connection with the Landlord and Tenant Act, 1927, has been considering the position under that Act with regard to compensation for goodwill on the expiration of a lease, the object being that the public should be enabled to feel that, whoever the referee might be, he would be guided by the same principles as his brother referees in arriving at the assessment of the value of goodwill in any given case. The chairman of the Association stated that at every turn the referees found themselves confronted with the difficulty that the Act provided no scheme upon which compensation for goodwill was to be calculated. They accordingly appointed one of their number, who on account of his wide experience both as a valuer and a referee was specially qualified, to draft a scheme for the consideration of the Association with a view to its general adoption.

The compensation provided for by the Act comes under three heads: (1) compensation for goodwill under sect. 4; (2) the right to a new lease under sect. 5; and (3) compensation for improvements under sect. 1. The chairman stated that the Association's suggestions for amendment of the County Court Rules under the Act were now before the Rules Committee, and he was satisfied that the Association would soon be called upon to suggest the necessary amendments to the Act, for which purpose he asked members to send in suggestions to the Honorary Secretary.

In another column will be found an important misfeasance action in which an accountant is concerned. At the time of going to press the evidence had been completed but judgment had not been delivered. The remainder of the report is accordingly deferred until our next issue.

LORD KYLSANT'S APPEAL.

THE appeal of Lord Kylsant against his conviction in the *Royal Mail Steam Packet Company* case came before the Court of Criminal Appeal last month, and a full report of the proceedings will be found in another column. The appeal was dismissed and the sentence confirmed. It will be remembered that the charge on which Lord Kylsant was convicted was the third count, viz, that he made, circulated or published, or concurred in making, circulating or publishing, a prospectus which he knew to be false in a material particular, and concealed the true position of the company with intent to induce persons to introduce property to the company.

The grounds of the appeal were:—

(1) That there was no evidence that the appellant made or published, or concurred in making or publishing, a written statement which was false in any material particular.

(2) That there was no evidence that he made or published the prospectus knowing it to be false in any material particular.

(3) That there was no evidence that he made or published a prospectus which he knew to be false in a material particular with intent to induce persons to entrust or advance property to the Royal Mail Steam Packet Company; and

(4) That the Judge at the trial had misdirected the jury.

The arguments of Counsel were largely directed to the interpretation to be placed upon sect. 84 of the Larceny Act, 1861, upon which the indictment was framed, this being the first case of the kind brought under that section.

Sir John Simon, who appeared on behalf of Lord Kylsant, said the question was whether the document was one which contained a statement known to be false. Continuing, he said:

> "The real test, I apprehend, is: Is that which is said to have been omitted deliberately omitted and of such a character that if it were added the words that are used are shown to be false? I suggest, if that is the true test, that after the verdict of the jury on the first and second counts there is

> no justification for the verdict on the third count. The question is not whether there is not some material which someone might want to consider. It is whether the thing which has been omitted, if you imagine it to be added, makes that which is affirmatively stated a lie."

After further argument, Sir John submitted that, except upon a misconstruction of sect. 84, there was no ground upon which his client ought to be convicted. The proposition to be found more than once in the summing up to the jury, he said, was that sect. 84 set up a standard of communication, and said, for instance, that there must be communicated to the shareholders or subscribers anything which it might be material for them to know; but he submitted that that was quite wrong. It might arise in some case in a Civil Court, but he contended that the proposition that the criminality of the publication of a prospectus by seeing if anything was omitted which somebody might like to have been told, was quite wrong. He apprehended that the Court would not take the view that sect. 84 called for a complete disclosure of everything, and submitted that in his summing-up Mr. Justice Wright did not make this clear to the jury.

The Attorney-General, in his reply, said that in his speeches to the jury he had made it plain, as also had Mr. Justice Wright, what was meant by the use of the word "false," namely, that by stating some things and omitting others a false impression was created. In his view the test was :—

> "Can you say that that which is stated creates one impression when if you had stated the other facts you would have completely removed the impression which you caused to be created. . . . The document comprised not merely the fact stated in each sentence, but the inference and impression which any reasonable person obtained from reading the sentences and taking them as a whole. Anyone looking at the prospectus must have thought that the company was one in which they could fairly safely invest money."

He submitted that what was said, in the absence of what was omitted, created a false impression as to the true nature of the company, and if that were so the jury were perfectly entitled to come to the conclusion that the prospectus was a false document.

In his closing speech, Sir John Simon remarked that he did not regard the prospectus as a highly satisfactory one, and pointed out that a law had since come into operation requiring that prospectuses should contain positive statements as to past profits, but that new law did not affect the case under consideration. While this most painful inquiry had called specific attention to the desirability of giving more information—and nothing he had argued was intended to suggest the contrary—he submitted that, on the law as it stood at the time, although his client might have been too sanguine, he was never guilty of a fraudulent or false statement.

Mr. Justice Avory in delivering judgment said that the third ground of appeal was immaterial because it was now admitted that if the prospectus was published and was false and known to be false there could be no doubt it was published with intent to induce persons to entrust or advance property to the company. His Lordship then referred to various authorities which in the opinion of the Court supported the view of the law expressed by Mr. Justice Wright. In a case which arose in the year 1900 Lord Macnaghten said :

> "It is a trite observation that every document, as against its author, must be read in the sense it was intended to convey, and everybody knows that sometimes half the truth is no better than a downright falsehood."

In another case in the House of Lords in 1896 Lord Halsbury said :

> "If by a number of statements you intentionally give a false impression and induce a person to act upon it, it is not the less false, though, if one takes each statement by itself, there may be difficulty in showing that any specific statement is untrue."

Mr. Justice Avory said that in the opinion of the Court these authorities were sufficient to support the summing up of Mr. Justice Wright so far as it consisted of any direction on the question of law arising in the case. It was true, he said, that these opinions were expressed in civil proceedings but they were none the less applicable in the present case, particularly in view of the fact that Lord Halsbury in giving expression to the view above quoted had in mind criminal as well as civil liability. "The falsity in this case," said Mr. Justice Avory, "consists in putting before intending investors, as material upon which they can exercise a judgment as to the existing position of the company, figures which apparently disclose the existing position, but in fact conceal it." With regard to the further question as to whether there was evidence upon which the jury could properly find that the

appellant knew the document to be false, he said if there was evidence that it was false in the particulars already indicated, there was ample evidence upon which the jury could find that the appellant knew of its falsity, knowing as he did the means by which the dividends had been paid.

In the result the Court came, without hesitation, to the conclusion that in the summing-up, regarded as a whole, there was no misdirection; that there was ample evidence upon which the verdict of the jury could be supported; and that the appeal must accordingly be dismissed. On the appeal against the sentence the three Judges, after a short consultation, were unable to see any reason why the sentence passed on the appellant should be altered.

It has to be borne in mind that the charge in this appeal has reference solely to the contents of the prospectus and that the case relates back to a period prior to the passing of the Companies Act, 1929. By that Act every prospectus must contain a report by the auditors of the company as to the profits of the company for each of the three financial years immediately preceding the issue of the prospectus. If those provisions had been in force when the prospectus of the Royal Mail Steam Packet Company was issued it is hardly conceivable that these criminal proceedings could have arisen. The prospectus did not contain any report of the auditors and the profits of the individual years were not specified. The main point that emerges from the decision in this case is that the provisions of sect. 84 of the Larceny Act, 1861, must be interpreted to mean not only that the individual statements made in a prospectus are true in themselves but also that the general impression conveyed by those statements, taken as a whole, is not calculated to misrepresent the true position. The case has also emphasised the necessity of ensuring that a prospectus shall contain such information as will convey a clear and accurate view of the progress and position of the undertaking with which it deals.

"THE STATIST."

On November 14th *The Statist* issued a large banking section extending to 136 pages, in which particulars were given of the circumstances of formation and the present position of most of the important banks in the Dominions and foreign countries. These particulars were prefixed by a long article on "The Breakdown and Reconstruction of the Gold Standard," and shorter articles on the banking situation in the United States, the French banks and the crisis, the evolution of the German banking crisis, and the situation in Austria, Hungary, Japan, Canada, Australia, New Zealand and South Africa. To those who are concerned with financial matters this banking section is full of interest.

UNEMPLOYMENT INSURANCE PROVISIONS AS AMENDED.

[CONTRIBUTED.]

Recent legislation has altered considerably the Unemployment Insurance scheme, particularly those provisions concerning conditions for receipt of benefit. Two Acts of Parliament took power to make regulations and Orders in Council, and these have now been issued. The No. 3 (1931) Act operates from October 3rd, and the Economy (Unemployment Insurance) Act commenced in part on October 5th and 8th, with further regulations operating from November 12th. The latter Act concerns conditions governing Transitional Benefit and applies a period limit for receiving Ordinary Benefit; it also makes alterations in the amounts of contributions and benefits. The No. 3 Act imposes additional conditions for receipt of both types of benefit, on four special classes of persons. Ordinary benefit is granted where the insured person proves 30 contributions paid in the two years prior to date of claim. Transitional Benefit is granted where this first statutory condition cannot be fulfilled, but the lesser qualification of eight contributions in two years or 30 contributions at any time is fulfilled. In addition, for these claimants, proof must be present that the person concerned is normally in insurable employment and normally seeks his livelihood by means of such employment. The other conditions applicable in the case of both classes are that the claimant is capable of and available for work and registered as unemployed.

To understand references to "benefit year" and "benefit quarter" it should be noted that each person has his own individual benefit year starting from the date of the original claim. There are no fixed statutory dates for commencing and ending applicable to all persons. Ordinary Benefit claimants now can draw only six months' benefit in any benefit year. When 156 days' benefit has been drawn the claimant is transferred to the Transitional Section and becomes liable to the additional conditions, including the "needs test," notwithstanding that he can still fulfil the "30 contributions in two years" rule. But providing that from the end of the 156 days period he proves another ten contributions paid, and the ordinary conditions remain fulfilled, he reverts again to Ordinary Benefit as from the commencement of his next benefit year without the needs test. In practice this means that claimants with good insurance records will be unaffected by the transitional rules.

As regards conditions for receipt of Transitional Benefit, the Economy Act provides that in addition to the other conditions the claimant must pass a "needs test" propounded by the different Public Assistance Committees. But it is expressly laid down that where interviews are made necessary the Poor Law Institutions must not be used. Doubtless most interviews will take place at the Employment Exchanges or the offices of the public authority

concerned, and benefit payments will be made through the Exchanges the same as for Ordinary Benefit. The amounts of benefit, however, will be decided by the Committees or Sub-Committees mentioned, and will vary according to the needs of the claimant, but must not be in excess of the statutory unemployment rate of benefit. The procedure at the outset will differ little from that which obtained prior to April, 1928, except that the Rota Committees then functioned. Forms obtainable at the Exchanges will be required to be filled up, and particulars of household income will have to be given. On these particulars will rest the amount of benefit according to the needs of the claimant, and ordinarily awards will be made for periods of four weeks. In practice it will be found that great numbers of applicants will be granted benefit without recourse to interviews before Committees, grants being made on details given on the forms and by necessary inquiries—that is, for clear cases. Interviews, however, will take place where a case is obscure or household income is high. Persons affected by the new rules will continue to receive benefit under the old conditions pending examination of claims under the new conditions, a transitory period for such examinations being provided of from two to four months, from November 12th, 1931. It should be clearly understood that the only part the Public Assistance Committees take in the scheme is the inquiries into the needs of the Transitional claimants and assessing the amounts of benefit. The Ministry of Labour remain responsible for dealing with all other provisions and for the general administration of the Unemployment Insurance scheme.

The classes affected by the No. 3 Act are as follows :—

Class A applies to persons who by intensive effort earn in three days, or less, high wages of more than the normal full week's earnings in the occupation concerned. Thus, if normal earnings are scheduled as, say, £3 per week, and £3 5s. is earned in part time, no benefit for the remaining time will be granted. If part-time earnings are, say, £2 15s., then the person will be entitled to 5s. for the unemployed days.

Class B applies to seasonal workers at seaside places and in occupations where work begins and ends on some definite date each year, and there is no such work available for the rest of the year. Regulations provide that to secure benefit in the "off season" a person must prove that in the two years preceding the date of claim he has been employed during the "off season" to a substantial extent, and that he can reasonably expect to obtain employment in that district during a substantial part of the "off season."

Class C applies to persons who are not normally employed for more than two days a week, persons who are regularly only so employed, and do not for various reasons work any time otherwise. Rules provide that benefit shall not be drawn except unemployment occurs on those days of the week that are usually worked.

Class D, Married Women.—A married woman is required to prove, in addition to all the other conditions, that since marriage she has had fifteen contributions paid. If more than six months have elapsed since marriage, then she must prove eight contributions during the three months preceding the beginning of her benefit quarter. Provided these conditions are fulfilled, she is entitled to the same benefit as any other insured person. But if these conditions are not fulfilled, then before benefit will be granted—whether she is an Ordinary Benefit or Transitional Benefit claimant—she must fulfil the condition of being normally in insurable employment and will normally seek her livelihood by means of such. Also proof must be present that she can reasonably expect to obtain employment in that district, regard being paid to her industrial experience and the individual circumstances of the case under review.

As regards part-time workers and seasonal workers of the special classes, these regulations do not apply to the ordinary short-time workers, working normal hours at ordinary wage rates in an all-the-year-round trade. The expression "seasonal workers" does not mean persons in trades with alternating slack seasons and busy seasons, such as the building, clothing and other trades, as most trades in the insurance field are those with known seasonal unemployment periods each year.

The rates of Contribution and Benefit are as follows :—

WEEKLY RATES OF CONTRIBUTIONS.

	Employers.	Employees.
Men of 21 and over ..	10d.	10d.
Women of 21 and over ..	9d.	9d.
Young Men, 18, 19, 20 ..	9d.	9d.
Young Women, 18, 19, 20 ..	8d.	8d.
Under 18 : Boys	5d.	5d.
Girls	4½d.	4½d.

WEEKLY RATES OF BENEFIT.

Men of 21 and over	15s. 3d.
Women of 21 and over	13s. 6d.
Young Men 18, but under 21	12s. 6d.
Young Women 18, but under 21 ..	10s. 9d.
Boys 17, but under 18	8s. 0d.
Girls 17, but under 18	6s. 9d.
Under 17 : Boys	5s. 6d.
Girls	4s. 6d.
Adult Dependants	8s. 0d.
Children (under 14, if at school or invalid until 16)	2s. 0d.

If a person, even though under 21, receives an increase of benefit by dependants' allowance, he or she becomes entitled to the rate of benefit as in the case of persons of 21 and over.

"Reconstruction—Contributions to a New Economic Policy" is the title of a series of articles collated by *The Times* and published in the *Times Trade and Engineeeing Supplement* on the first Saturday of every month.

Society of Incorporated Accountants and Auditors.

MEETINGS OF THE COUNCIL.

A meeting of the Council of the Society was held at Incorporated Accountants' Hall on November 19th, when there were present: Mr. Henry Morgan (President) in the chair, Mr. E. Cassleton Elliott (Vice-President), Mr. R. Wilson Bartlett, J.P., Mr. R. M. Branson, Mr. H. J. Burgess, Mr. F. Holliday, Mr. W. Holman, Mr. Thomas Keens, D.L., Mr. Ernest T. Kerr, Sir James Martin, J.P., Mr. C. Hewetson Nelson, J.P., Mr. James Paterson, Mr. W. Paynter, Mr. A. E. Piggott, Mr. G. S. Pitt, Mr. J. Stewart Seggie, Mr. Percy Toothill, Mr. A. H. Walkey, Mr. Frederic Walmsley, J.P., Mr. R. T. Warwick, Mr. E. W. C. Whittaker, J.P., Mr. Richard A. Witty, Mr. A. E. Woodington, Mr. Fred Woolley, J.P., Mr. J. R. W. Alexander, M.A., LL.B. (Standing Counsel), Mr. Ernest E. Edwards, B.A., LL.B. (Parliamentary Secretary), and Mr. A. A. Garrett, M.A., F.C.I.S. (Secretary).

Apologies for non-attendance were received from Mr. D. E. Campbell, Mr. W. Allison Davies, Mr. Edmund Lund, Mr. W. H. Payne and Mr. Alan Standing.

The reports of the Committees were received and adopted.

The Secretary reported the death of the following members: Mr. William Lofthouse (Fellow), Hull; Mr. David Stephen (Fellow), Cape Town; and Mr. William Alfred Tolley (Fellow), Toronto, Canada.

The President offered the congratulations of the Council to Mr. Thomas Keens upon his appointment as Deputy-Lieutenant of Bedfordshire, and to Mr. Fred Woolley, J.P., upon his election as Mayor of Southampton. Mr. Keens and Mr. Woolley acknowledged the congratulations of the Council.

COMPANY ACCOUNTS AND AUDIT.

It was resolved unanimously:—

"That the best thanks of the Council of the Society be accorded to the President, Mr. Henry Morgan, for his evidence given at the trial of the Auditor of the Royal Mail Steam Packet Company. In the view of the Council the President rendered to the profession as a whole a valuable service which was in accordance with the highest traditions and prestige of the Society."

The following resolution was also adopted:—

"That a Special Committee of the Council, consisting of the President, Vice-President, Mr. C. Hewetson Nelson, Sir James Martin and Mr. Thomas Keens, be appointed to consider the evidence adduced at the trial of the Chairman and Auditor of the Royal Mail Steam Packet Company, and to report to the Council whether, in the opinion of the Committee, any amendment of the law is deemed necessary, and/or what, if any, alteration of a voluntary character may be considered desirable in the compilation of company accounts or their certification by professional auditors."

A meeting of the Council of the Society was also held at Incorporated Accountants' Hall on October 29th, the President (Mr. Henry Morgan) being in the chair.

The Secretary reported the death of the following members: Mr. Frederick John Ault (Fellow), Birmingham; Mr. William Leslie Bodin (Associate), Birmingham; Mr. John Hatch Clayton (Associate), Brooklyn, U.S.A.; Mr. Thomas Mason Daffern (Fellow), Coventry; Mr. Alfred Davis (Associate), Leeds; Mr. Ernest Diamond (Associate), Winnipeg, Canada; Mr. Harold Edward Fawcett (Associate), London; Mr. Charles Leopold Kettridge (Fellow), London; Mr. Ernest Alfred Page (Associate), London; Mr. Robert Peveler (Fellow), Harrogate; Mr. Thomas Lewis Rawlins (Associate), Birmingham; Mr. Ernest Charles Cartner Smith (Fellow), London; and Mr. William Thorne White (Associate), London.

A number of elections to membership were made and other routine business was dealt with.

Obituary.

DAVID STEPHEN.

We learn with regret that Mr. David Stephen, F.S.A.A., died on October 26th. Mr. Stephen, until his recent retirement, was the senior partner in the firm of David Stephen, Storey & Co., of Cape Town, and was admitted to membership of the Society in the year 1904. He was on the Committee of the South African (Western) Branch of the Society from 1920 to 1927, and was held in esteem by members of the Branch.

WILLIAM LOFTHOUSE.

We regret to announce the death of Mr. William Lofthouse, F.S.A.A., which occurred at his home in Hull on October 31st. He was the senior partner in the firm of Messrs. William Lofthouse & Son, and was the oldest member of the Society of Incorporated Accountants and Auditors in the city, having been admitted originally to the Society of Accountants previous to its incorporation in the year 1885.

Born in Leeds, he came to Hull in early youth, and always took an active interest in the life of the city. He served on the Council from 1906 to 1919, occupying various positions of importance, including that of Deputy Chairman to the Finance Committee. Prior to his entering the Council he had been a District Auditor under the Municipal Corporations Act for upwards of twenty years. For his work in the British Legion, in which he maintained an active interest to the end, he was appointed life Vice-President, and as Chairman of one of the Military Tribunals during the War he gave much of his time and services to the country. Three of his sons and a daughter were also engaged on active service. He was a staunch Liberal in politics and a Free Churchman, being a trustee and founder of the Portobello Methodist Chapel, where the funeral service was held on November 4th, in the presence of a large and representative gathering, including officers and members of the Incorporated Accountants' Hull and District Society.

THE ROYAL MAIL STEAM PACKET COMPANY.

Lord Kylsant's Appeal.

The appeal of Lord Kylsant against the conviction and sentence of twelve months' imprisonment in the second division was heard in the Court of Criminal Appeal on November 2nd. Lord Kylsant was the Chairman of the Royal Mail Steam Packet Company until a few weeks ago. On July 30th last he was found guilty at the Central Criminal Court of making, circulating or publishing, or concurring in making, circulating or publishing a prospectus relating to the Royal Mail Steam Packet Company which he knew to be false in a material particular, with intent to induce persons to entrust or advance property to the company. Lord Kylsant was found not guilty of a charge of publishing annual reports for the years 1926 and 1927 which he knew to be false in a material particular with intent to deceive the shareholders.

Lord Kylsant had been on bail since July 31st.

The Judges hearing the appeal were Mr. Justice Avory, Mr. Justice Branson, and Mr. Justice Humphreys. The proceedings at the Court of Appeal consisted of an appeal against the conviction and application for leave to appeal against sentence.

The Attorney-General (Sir William Jowitt, K.C.), Mr. D. N. Pritt, K.C., and Mr. Eustace Fulton, appeared for the Crown, whilst Lord Kylsant was represented by Sir John Simon, K.C., Mr. J. E. Singleton, K.C., and Mr. Wilfrid Lewis.

As soon as the Judges had taken their seats and the case had been called, Mr. Justice Avory said he understood that Lord Kylsant had surrendered to his bail.

Sir John Simon's Speech.

Sir John Simon, opening the appeal before a crowded Court, every available seat being occupied, said: "Your Lordships have no doubt read the papers in this case. I will continue the matter by saying that the indictment contained three counts, each one of which was framed under a section of the same Act of Parliament, section 84 of the Larceny Act, 1861. The offences alleged in the first and second counts were charged with having been committed with another gentleman named Morland, and on those counts the jury acquitted both the accused. The third count is the one before the Court, and in that Lord Kylsant was indicted alone, the charge being that on June 29th, 1928, being a director of the Royal Mail Steam Packet Company, he made, circulated and published, or concurred in making, circulating and publishing a prospectus that he knew to be false in a material particular. The way in which the indictment was framed was a little unusual. The defence called attention to the fact that it was in much more general form, and that they should know with more precision the nature of the falsity alleged. This brings one at once to a point of great importance, namely, the crucial question of the construction of section 84 and the application of the facts to that section, and within what limits and for what purposes is it material to consider what is admitted when you have a document every single word of which is true."

Counsel added: "If you take the prospectus, it is a case in which it is true to say that every word in it is an absolutely truthful statement. On the other hand it is pointed out that there are other things which are not stated in it, and the suggestion is, or rather was, that, having regard to matters which are not explicitly stated, the allegation would be justified that the document was false in a material particular."

Sir John illustrated his argument by saying: "Supposing a prospectus was issued inviting subscription, say, in a mining company, and the directors stated that they had before them a report of only a week before that the mine was in first-class order and was producing coal at the rate of so many thousand tons a day, and let me further suppose that this was true. Yet, if the fact was that twenty-four hours before they had a telegram saying the mine was blown up and useless, then I will not stand here and maintain that in those circumstances the prospectus does not bring anyone within the range of section 84 because the words used are true. Anyone who makes that statement intends by the words he uses to convey that the situation as he saw it a week ago is the situation now, and that would be a lie. I am not contending that. On the other hand I am contending that it is quite a mistaken view of section 84 to treat it as though it was penalising under our criminal code what I call mere economy in information. It is punishing a statement that is false and it is punishing it with all the rigour of the criminal law. It is not a question such as sometimes arises in the Civil Court. The question is: Is this document one which contains a statement known to be false? The real test, I apprehend, is: Is that which is said to have been omitted deliberately omitted and of such a character that if it was added the words that are used are shown to be false? I suggest, if that is the true test, that after the verdict of the jury on the first and second counts there is no justification for the verdict on the third count. The question is not whether there is not some material which someone might want to consider. It is whether the thing which has been omitted, if you imagine it to be added, makes that which is affirmatively stated a lie. I think it is easy to demonstrate here that nothing of the sort arose. Economy of information in the prospectus or the failure to give a more detailed survey is, I apprehend, not within section 84 at all except in a case in which it can be said that that which is omitted makes false that which is stated."

"The point about the matter really was," said Counsel, "that the prospectus was one which stated the result of the working out of an average, which was for ten years. The ten years' figures put together for making up that average were absolutely accurate, and were certified as such by the auditor—by the very auditor who had been acquitted by the jury at the Central Criminal Court. The document on the face of it warned anyone who read it that this shipping company was not having as good a time as it used to have. It showed that the company was suffering from depression. Having stated that, the document proceeded to give, absolutely accurately, what the average was."

Mr. Justice Avory: The average of what?

Sir John Simon: The average of the figures for the past ten years of the balances available for the purposes of meeting the claims which the prospective subscribers would have if they took up shares.

Sir John Simon handed to the Judges a sheet of paper which, he stated, gave the figures referred to.

Answering Mr. Justice Avory, he said the figures given in it were based on exhibits at the trial, and were referred to there in the course of an elaborate proof.

Mr. Justice Avory: They are really balances shown on the accounts?

Sir John: Absolutely. The date of the prospectus was June 29th, 1928. The subscription list opened on July 3rd and closed the next day, the issue being over-subscribed.

Dealing with the figures given in the prospectus regarding share capital, debenture stock, and the reserve fund, Sir John said that a good deal was said about the latter in the course of the hearing, but there could be no doubt that the company had an extremely large reserve fund, and quite rightly stated it. The company acted as its own insurers for a certain portion of its assets. It was as well

to say that although the company was thought of as purely a ship-running company, about a quarter of its interest was in ships and about three-quarters was in investments in various other shipping companies. The prospectus was for the issue of two million 5 per cent. debenture stock to provide additional capital for the general purposes of the company. It was stated that the interest on the present issue of debenture stock would amount to £100,000 per annum, and the next two paragraphs, which were true in every particular, were the paragraphs on which he desired that attention should be concentrated. The first began with a warning or a pointer. It said: "Although this company in common with other shipping companies has suffered from the depression in the shipping industry, the audited accounts show that during the past ten years the average annual balance available, including profits of the insurance fund, after providing for depreciation and interest on existing debenture stocks, has been sufficient to pay the interest of the present issue more than five times over."

"That is to say," explained Sir John, "sufficient to pay more than £500,000. I attach importance to those opening words. 'Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry.' I also attach importance to them in view of the reference to the averages which follow. The dividends on the ordinary stock are then given from 1911 to 1927, and this series of figures is entirely accurate. The meaning of that is that you, as subscribers, will want to know the records of the company, and in answer the statement is that we have been suffering from the prevailing depression, but the average annual balance in the past ten years is five times more than the amount to pay your interest. That is true. The Attorney-General always accepted that statement as the statement of that which was completely true. Those words 'Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry,' are words which were suggested to, and accepted by, Lord Kylsant in consequence of a suggestion of Mr. Morland, the accountant."

"The company's annual report for 1927 was," said Sir John, "prepared in the ordinary way and contained some rather important matters. It dealt with the fact that that year had been a better one than 1926, although, of course, things were still bad. One of the principal matters was the insurance fund of £1,311,755, which was £10,808 larger than in the year before. There is no dispute that these figures represented the true state of affairs. When you get to the assets there are enormous values, notwithstanding the great writing down. Lord Kylsant had written down a great deal more than was customary. If we look at these things with the eyes of an accountant in 1927 we see the certified and audited accounts of the company showing that in 1927 the sum available would have been £500,688. I say, without the slightest fear of contradiction and with the knowledge that the prosecution never suggested the opposite, that the whole statement in that paragraph is one which is absolutely and completely true. The statement is an average, and if we may attribute to the person who reads it a knowledge of the use of English we may say that he knew perfectly well that the average was likely to contain figures of all sizes and sorts, and indicates that it was not desired to suppose that the company was in as good a position as before the war, but that, like others, it was suffering from the effects of depression. The big question which arises is: If everything there said is true were there additional facts which, if stated, would have amounted to this, that it would have made any statement an untrue one? In my humble opinion there was nothing of the kind."

Sir John then referred to another document which, he said, showed money paid during the period from 1911 to 1927. It was proved at the trial and was not challenged in any way——

Mr. Justice Avory: Before you leave this document will you tell me, looking at the year 1914, why the figures £200,000 are in red?

Sir John: Because in 1914 the reserve fund was reduced by £200,000 just as in 1926 it was reduced by £150,000, and in both cases a statement is made——

Mr. Justice Avory: That is the consequential question. Was that fact published?

By reference to other documents, Sir John supported his reply that those facts were published.

As to dividends which were paid, Sir John said: "This is a very stong instance of what may now be popularly described as conservative policy, because the company would have been thoroughly within their rights if they had distributed much more generously in the earlier part of this period, and the ability which they had to continue payment of dividends in what were bad times is due to the policy which had been pursued."

Referring to Lord Kylsant's evidence at his trial, Sir John said: "Lord Kylsant told the jury perfectly fairly 'I am a strong believer in what are called shipping cycles. I have found that you do get these changes from good to bad and bad to good.' He does not profess to be an economist—my own belief is that more economists explain these things than understand them—but he says: This has been my belief all my life,' and he says: 'My belief is that if you do have a bad time, say, for four or five or six years, recovery is imminent.' It is no part of the defence of Lord Kylsant that he anticipated, in the sense of paying to-day what he was only entitled to pay to-morrow. He did not do so. There is not a single penny that this company has paid out to a single soul that it was not entitled to pay out. There is nothing of sanguine hopes here. Lord Kylsant said he was not in the position to promise anyone a good time in the future. He says: 'I believe in it most sincerely, but I was not doing more than this, and it was all I could do. I said the last ten years of this company gave us on an average an amount which is five times greater than we wanted to pay the interest on the debentures we are seeking to issue, but I tell you further that this company has been suffering from this shipping depression.' The facts were that, looking through a series of undoubtedly very bad years, the first in which things began to lift was 1926. At any rate, in the first four months of 1926 there was a quite distinct improvement which was justifying Lord Kylsant's own belief that the tide had turned. That was checked by the general strike of 1926 and what followed. Notwithstanding that, 1927 was better than 1926, and 1928 was better than 1927. That was what Lord Kylsant said, if it is a question of anybody judging the state of his mind and his intentions. He repudiated altogether the idea that he had any intent to mislead, and he said the fact was that this bad time had extended over nine years—perhaps ten—whereas he and many others were quite confident it was lifting in 1926 and 1927."

"For the rest," added Sir John, "he says, 'I am not aware that there is any single statement in this document which is not completely and absolutely accurate. It is based upon the auditor's own figures. A portion of the document was actually written upon the suggestion of the auditor himself. That auditor, who was put into the dock with me, has been acquitted by the jury of having made any attempt to defraud anybody.' Lord Kylsant says, and I say it here on his behalf. 'I respectfully submit that except upon a misconstruction of section 84 there is no ground upon which he ought to be convicted upon the third count.'"

Sir John added that if section 84 placed the penalty of the criminal law upon everybody who issued a prospectus unless he put in every fact that might influence a shareholder's judgment, then Lord Kylsant was wrong. He submitted that that was quite a wrong view. Even to-day after the new Companies Act there was no such provision in the law, and of course they were dealing with the period before the Act.

Sir John Simon pointed out that before the Companies Act, 1929, was passed, there was no obligation under the criminal law that any statement should be made in a prospectus about the profits of a company. The provision was that if a statement were made it must not be false, to

the knowledge of the person making it, in any material particular. It was admitted in that case that no such statement was made. The proposition to be found more than once in the summing-up to the jury was that section 84 set up a standard of communication, and said, for instance, that there must be communicated to the shareholders or subscribers anything which it might be material for them to know. "I think that phrase occurs in the summing-up, but, in my submission, that is quite wrong. For all I know it might arise in some case in a Civil Court, but the proposition that you can test the criminality of the publication of a prospectus by seeing if anything is omitted which somebody might like to have been told is, I submit with great respect, quite wrong."

Mr. Justice Branson asked if it were necessary that the omitted information should make the published information false.

Sir John Simon replied that every fact set out was true. They knew that the company did not recover its trade as rapidly as one could have hoped, but if the facts had been as might reasonably have been anticipated in 1928, no trouble would have arisen. It was not a case where someone had been anticipating profits or paying dividends that should not have been paid; there is not a suggestion of a false figure anywhere. At the most it was a case of miscalculation, if they liked, and undue sanguineness on the part of some people who believed that things would be better than in the result they were. What was criticised was not their financial policy and matters in respect of income tax and excess profits duty and those funds. The income tax reserves were things which came to the company in the year in which they were distributed.

Mr. Justice Branson: When you say "came to the company in the year" you do not mean that the assets with which they were paid came to the company in that year. They had accrued years before and were kept in suspense because it was thought they would have to pay them for income tax, and when they were free from the incubus of sitting waiting for the income tax statement, items becoming then available were treated as profits for that year and not as profits for the year in which they came in from the outside?"

Sir John Simon agreed. It was suggested, he added that we were engaged in drawing on some ancient reserves, but I have made my point if I have shown that the reason these sums were distributed when they were was the fact that they became available only in the year in which they were distributed. It would be inaccurate to say there were sums that we might have distributed before. The same thing was true of the excess profits duty.

The Attorney-General: I agreed Sir John made good his point that the income tax reserves only melted in the course of the years 1926 and 1927 when they were available and used, but on this charge we are dealing with a whole series of years, and in 1924, the company was transferring to profit and loss £450,000, which was very much more than anything which came in or became melted during that year at all.

"There were," said Sir John, "three heads under which the complicated matter of excess profits duty was dealt with. The ordinary excess profits duty which had now ended, extended over seven years and, in the case of the company, at one time some very heavy claims were made. It was found that the claims were not justified and there was some 'melting.' There were two other figures, of quite a different character. The first was the special allowance by the Government under the head of 'obsolescence.' That meant that when the German submarines were busy with English ships the authorities were anxious to encourage the building of vessels. Prices were high, and an extremely good 'obsolescence' allowance was made by the Government to shipowners. From time to time substantial sums were paid to the companies."

Mr. Justice Branson: The fact that the "obsolescence" was paid in a particular year does not indicate the earning capacity of that year?

Sir John: That is so. The third head was that of "deferred repairs," which meant that, in the difficult years, everybody was being urged to run their ships regardless of consequences to the vessels and, later, large sums under this head were paid. The point alleged was: "Your excess profits duty contributions were spread over a number of years, but at the time this prospectus was issued they had come to an end. As regards your income tax, of course you can credit yourself with deductions made year by year. On the other hand, you have not been doing well and you never stated that these other very material sources, as such, were ceasing. It may have made a very material difference if you had."

Lord Kylsant's position is this: that while he agrees that these particular sources were coming to an end, he says, for the purposes of considering whether or not the public could fairly be asked to subscribe to these debentures, the facts were that he was completely convinced that the company was rising and could abundantly counteract any losses of that sort. He never professed to set out, either by way of promise or prophesies, exactly what the position would be. Here was a concern with something like £16,000,000 of assets, after a very severe writing down, with an enormous reserve fund—a concern which, because of prudent management, had in fact succeeded in maintaining a fairly level dividend through all these years, and the prospectus he issued was issued in all honesty.

The real situation, Sir John submitted, was this: What is it that section 84 calls for? and secondly, has the jury, with all respect to Mr. Justice Wright, been given a clear direction as to the dividing line? Sir John apprehended that the Court would not take the view that section 84 called for a complete disclosure of everything, but submitted that in his summing up Mr. Justice Wright did not make manifestly clear to the jury the distinction on the construction of the section.

Mr. Justice Avory: I notice that specific passages are extracted from the summing-up and made the subject of a ground of appeal.

Sir John Simon: That is so; we thought that was a convenient course as it is a very long summing-up, and we naturally desired to give everybody an indication of the places where we thought some grounds arose.

Their Lordships were each handed a printed volume of Mr. Justice Wright's summing-up, which occupied a whole day at the Old Bailey, and Sir John Simon referred to passages which had been selected for criticism.

In a lengthy criticism of Mr. Justice Wright's summing-up, Sir John Simon called attention to a passage in which the Judge asked the jury: "Do you think that people invested on the faith of this prospectus, and in the belief that it contained all it ought to contain, whereas if they had been told the true facts they would not have put their money into this concern at all because they would have wanted some guarantee as to the earning capacity of the company?" This, said Sir John, came almost at the end of the summing-up and at a very critical stage. He submitted that it applied a test which was not the right one, and with the greatest respect for the Judge he challenged the proposition altogether. The jury, Sir John Simon complained, were not warned by Mr. Justice Wright that they were dealing with a criminal and not a civil case. Nowhere, also, did the Judge tell them they were not to re-write the prospectus, and not to find criminality because they thought there were many things which Lord Kylsant might and ought to have stated.

Mr. Justice Avory suggested that the pith of the whole matter was reached when the Judge told the jury that assuming they were satisfied there was a misleading statement, they must decide whether the prospectus was put together with the intention of stating particulars and not stating others so that anyone could be misled. Was it a misleading document because it conveyed a certain impression that was not the real truth?

Sir John replied that the section seemed to be directed not to a misleading impression produced by an imperfect statement but to a statement which was a false statement of fact.

After the luncheon adjournment, Sir John Simon dealt at length with the evidence given by Lord Kylsant at the

trial, and emphasised the suggestion that there was great foundation for the belief by Lord Kylsant in what was known as the shipping cycle—an upward trend of business that would counteract any loss in other forms of income. Sir John concluded his speech by saying: "Surely it is a very sad thing if something that is economic in its information is to be declared to be the same thing as a deliberate falsehood of which only a man who is prepared to perpetrate a fraud would be guilty."

The Attorney-General's Reply.

The Attorney-General at once rose to reply. Sir William Jowitt said that in his speeches to the jury he had made it plain, as did Mr. Justice Wright, what was meant here by the use of the word "false," viz, a document which by stating some things and omitting others created a false impression. That, in my submission, said the Attorney-General, is still the test. I entirely concede that it is not a question whether you think this prospectus too tricky or too clever. Everybody who looks at it for a moment must realise it is that, or that it is a deplorable document for an honest man to have put out. I quite agree that the test is this: Can you say that that which is stated creates one impression when if you had stated the other facts you would have completely removed the impression which you have caused to be created?

If that test were applied and the document taken as a whole it might be seen to be a false one. The document comprised not merely the fact stated in each sentence, but the inference and impression which any reasonable person obtained from reading the sentences and taking them as a whole. Anyone looking at the prospectus must have thought that the company was one in which they could fairly safely invest money. It offered security almost equal to gilt-edged security. People were told what the dividend had been in the past few years—5, 4 and 5 per cent. in 1925, 1926 and 1927. In the earlier years, around 1920, the dividends were 8, 7 and 6 per cent., which showed that they had been having a hard time later. It had emerged that the company had some very good years, and had allocated to the reserve very large sums of money.

The company had been living on its own fat, accumulated during previous years, until it had become nearly a skeleton. Yet, if any person read the prospectus he would certainly not suspect that the company was in an exceedingly dangerous position. Lord Kylsant might be right about a "shipping cycle." The fact was that unless he was right about these things nothing could save the company from certain destruction, and that was known in June, 1928. What was concealed was that, for several years, a tremendous sum—£5,700,000—taken from reserves built up in earlier years, had been used to pay dividends. Sir William Jowitt submitted that there was ample material upon which the jury might come to the conclusion that the view they took was a correct one.

Mr. Justice Avory: You are pointing to the distinction between a false impression conveyed and a false statement which is literally false?

Sir William agreed.

Mr. Justice Avory: Suppose a cricketer said that during the last five years his annual average had been twenty and he had in fact made a century in his first year and had made nothing since?

Sir William: That certainly would be a case in which the jury would be instructed that the statement was false.

SECOND DAY'S PROCEEDINGS.

Directly the Court sat Mr. Justice Avory asked Sir William Jowitt: Will you find it convenient to inform the Court in what respect you suggest this document (the prospectus) conveys a false impression, apart from anything which is omitted which you say should have been stated?

Sir William Jowitt: I am not the least anxious here, nor was I anxious at the trial, to strain the words of the statute. I think there was great force in the illustration Sir John Simon gave of a prospectus in which it is stated that the directors have received a report stating that their mine was doing well, but since that report, and before the issue of the prospectus, they received a telegram to the effect that the mine was burned down or destroyed. He concedes that if a prospectus was put forward stating the fact that a report had been received it would constitute the document a false one. It is as well to analyse why it is a false document. It is false by reason of the fact that, whereas the prospectus invited the investor to put up money in the belief that there was a reasonable prospect of getting a return, in truth and fact the directors knew circumstances which made it very unlikely, and therefore you get a false impression. So here you must bear in mind that this document was addressed to prospective investors. The directors are saying: "We invite you to invest your money in a debenture issue, and we tell you circumstances which show that there is at least a strong probability that your money is perfectly safe." That is what this document must mean.

The prospectus manifestly purported to set out the relative circumstances which the prospective investor had to bear in mind. It said: "We, like other shipping companies, have been having difficult times lately. . . . During the past ten years the average annual balance available . . . after providing for depreciation . . . has been sufficient to pay interest on the present issue more than five times over." That manifestly meant that there was really very little danger of debenture holders, who ranked before any shareholders, losing their money.

The prospectus went on: "After providing for all taxation, depreciation of the fleet, &c., adding to the reserves and payment of dividends on the preference stocks, the dividends on the ordinary stock during the last seventeen years have been as follows." Then under each year the figures were set out.

Taking as an illustration the year 1924, Sir William said it was true that the company did increase the insurance fund, which was one of the published reserves, by £40,000, but there were special credits brought in to the extent of £830,000. It seemed to him totally untrue to say, therefore, that the company had in that year added to their reserves because the insurance fund had been increased by £40,000. On the balance of that year with regard to reserves the company was down, and had utilised reserves to the extent of, roughly, £830,000.

It seems to me, said the Attorney-General, no answer to say that, comparing 1927 with 1911, they have, in the course of that period, built up their reserve very considerably. It is true that they have, but they do not specify their unpublished reserves, and if you say that in the year 1924 they paid a dividend of 6 per cent. after depreciating their fleet and adding to their reserve, how could anybody possibly suppose that they have utilised reserves in that year to the extent of over three-quarters of a million pounds?

Why I say this document is false is that I suggest that, having regard to the fact that it was addressed to prospective investors, and to the obvious implication that prospective investors are having placed before them relative facts to enable them to make up their own minds as to whether or not they are to invest their money in this supposed issue, this document is stating that there is not only nothing to cause alarm or disquiet, but there is every reason for supposing that the debenture holders will be quite certain of their security and a return on their money. I submit that this document was wholly false. There was no reason to suppose that these investors would continue to receive a return on their money. There was every reason to suppose that it was exceedingly doubtful whether they would receive a return.

It is true that had there been a complete change in the situation, had some new cycle intervened and the existing situation been dispelled, it is possible that all would have gone well, but it is certain that, if things went on as they were then, the prospective investors would be in great peril. The position in June, 1928, added Sir William, must appear that excess profits duty reserves, which had been a very large sum, had entirely

gone. Tax reserve only remained to the extent of that automatic augmentation which must continue as long as a company paid no tax itself. Deferred repairs reserve had gone, and so had corporation profits tax. There was no other reserve left. Taking 1925 or 1926, it would be seen that, without special credits, there had never been enough to pay debenture interest.

In 1927 the surplus was £737,000, but interest upon investments was £559,000, about £300,000 more than normal, and that was because the Nelson Lines, two of the subsidiary companies, had declared a bonus of £300,000. That bonus, however, was not declared out of the profits of the year at all, but the Nelson Companies, in their turn, were doing exactly what the Royal Mail was doing, viz, disposing of some of the money which they had put aside from better days. So even in that year, with the fortunate windfall of this £300,000, the company were in a position of not being able to pay their debenture interest without the use of special credits. In the other years when there was no windfall the position was even more striking. In every year from 1921 down to 1927, after allowing for depreciation and after bringing into account the interest from investments, there was a deficit, except where there was the windfall from the Nelson companies.

Let it be assumed that, in the course of the seven years, the money was properly paid into the yearly accounts; in the course of those years the company, in order to carry on, had utilised more than five and a half million pounds of money, the origin of which was to be traced to the prosperous days of the first three years. Those three years were admittedly abnormal, and had no reference, and therefore no relevance, to the question: What would the investor expect to happen in the future?

It is all very well to say that this sort of laxity which this document shows must be stopped but it has not to be stopped by straining a criminal statute. He was prepared to assent to the view that he must show that something was omitted which showed that there was something expressed or implied in the statement which was untrue. What he suggested was implied was that if the investor chose to invest his money in the securities they would bring in a yield of rather less than 5½ per cent., and he could be satisfied that he ran no risk. The fact was that that implication was wholly misleading.

It was misleading to mention the payment of dividends and talk about adding to the reserves, and to conceal the fact that they were able to pay the dividends, current expenses or debenture interest only by utilising money which had been stored up in the three abnormal and irrelevant years. The Attorney-General submitted that Mr. Justice Wright put the issue perfectly plainly before the jury. Several times he drew the distinction between what would be called for as a matter of fair dealing between honourable men, and the requirements of a criminal act. He told the jury they must look at it from a wholly different point of view. Mr. Justice Wright told the jury they must consider whether the intention of stating certain things and not stating other things was that people reading what was stated, and not knowing what was not stated, would be deceived as to the true nature of the company.

Sir William submitted that what was said, in the absence of what was omitted, created a false impression as to the true nature of the company. If that were so the jury were perfectly entitled to come to the conclusion that this prospectus was a false document. A great many of these financial cases are cases in which persons have deliberately forged documents, or taken money which did not belong to them, and cases of that character, or paid dividends out of improper funds, said Sir William. It is right to say that this case differs totally from those I have mentioned, and in my working time at the Bar this is the first occasion that I have known this statute applied to this sort of case.

On the other aspect of the case the Court had to consider how far effect must be given to the facts. If they held that the case was properly put to the jury, who were told that the document might be a false one because that which was not stated made that which was stated absolutely misleading and false, he submitted that the jury were entitled to come to the conclusion they did.

Sir John Simon, replying, said: This case is far removed from some of those which sometimes come before the Criminal Courts. We hear of cases where there is deliberate misuse of banking accounts and falsification of documents, or misappropriation of funds. Here there is nothing of that kind. I trust that when your Lordships have heard the arguments you will come to the conclusion that this appeal must be allowed.

Addressing Sir William Jowitt, Mr. Justice Avory said: I want your view about the Judge's direction to the jury after they had retired and when they sent him a message. I want to know whether, in your view, the Judge was directing the jury unduly in favour of the appellant or not.

Sir William replied that, in his view, the Judge was wrong in that direction. I think he mis-stated the law in appellant's favour. It was quite obvious that the jury thought that this might be a case where people had put forward a document which they knew to be false with the intention that it should deceive, but their motive for so doing might be a good one, viz, they thought that, in the interests of the shareholders themselves, a true revelation would have had the effect of making the thing go down with certainty. Thereupon the Judge directed the jury in such a way that they may have understood that there must be some other motive than the one I have indicated. He should have told the jury that if they found that the document was false, and known to be false, and was put forward with the intention to deceive, they should not bother about motive. Murder is none the less murder because the person who is murdered suffered from cancer and death was a happy release.

Mr. Justice Avory: The Judge seemed to have been influenced by the marginal note to the section, and appears to have overlooked the definition in the enacted part of the section which deals with intent—the intent to deceive, to defraud; and the third, the vital one, the intent to induce persons to advance money.

Sir William: Precisely.

Continuing his arguments, Sir John Simon said there seemed to him to be two aspects of the matter which came into the discussion. One related to the reference to reserves and the other concerned the argument that, whatever might have been true about things up to date in the prospectus, the language used, or what was alleged to be the implication, should be regarded as false because the prospects were, in the view of the prosecution, so different from the past. He submitted that it was an erroneous construction of the prospectus to say that the "special credits" were in the proper sense of the term or in any relative sense reserves, the exhaustion of which contradicted the assertion in the prospectus. It was quite wrong to treat them as unpublished reserves. It was manifest that the prospectus referred to published reserves, and that it was incorrect to suppose "special credits" were what were called unpublished reserves.

Mr. Justice Branson: Would it be right to describe them as taxation reserves?

"I do not complain of that word," replied Sir John, who added that a prudent company did not distribute in dividends to its full capacity and leave nothing in the bank, but reserved, or conserved, a certain amount until it ascertained what its liabilities were. He had never understood the emphasis which had been placed on the reserves part of the case, because Mr. Justice Wright, in his summing up, dealt with it only briefly at the end, as much as to say, "Well, there is something about reserves, and there it is."

Mr. Justice Branson: You mean he more or less brushed it aside?

Sir John Simon: Yes, it amounts to that. And yet the Attorney-General seems to have stressed it to-day.

Sir John Simon having spent considerable time analysing the company's accounts and balance sheets, Mr. Justice Avory asked if it was material when they were considering

the third count. The ordinary member of the public who is concerned with this debenture issue, said his Lordship, knows little of these accounts, and all that we have to consider is what would be the effect on the mind of the ordinary member of the public when he reads the words "added to reserve."

Sir John Simon said he agreed, but he was dealing with these matters because the Attorney-General had based a considerable part of his argument upon them. "All I am saying," added Sir John, "is that this is not some guilty secret which someone was keeping up his sleeve, because there was nothing secret about it. The figures do not mean that the company were drawing these enormous sums from reserve, and as regards income tax it is a pure book-keeping entry."

Sir John said a great injustice would be done if it were said that the company had been exhausting its reserves at the very time when they said they were being built up. The full facts were available to anyone who cared to investigate them. The truth was that the reserve fund had been built up from £120,000 in 1911 to £1,450,000 in 1927, and the insurance fund from £300,000 in 1911 to £1,311,755 in 1927.

The Judge never gave any direction to the jury on that line of argument. They should have been told that the income tax reserve account consisted mostly of things which were not really reserves at all, but nothing more than profits which were then released for the reason that the law permitted deduction of tax to be made when paying dividends.

Sir John remarked that he did not regard the prospectus as a highly satisfactory one. "A law has now come in that prospectuses shall contain positive statements about the profits of years past, and we are all very glad of it. It would be, in my opinion, a grave misuse of section 84, after this unhappy story of the Royal Mail Steam Packet Company, to treat that which is affirmatively stated, and is quite true, as though it carried an implication that there were any other facts which could be brought forward and put in the scales to weigh against the investor. This most painful inquiry has called specific attention to the desirability of giving more information. Nothing I have argued here is intended to suggest the contrary. With a sense of great responsibility—and this is my final word—I do hope that the fact that I have been able to serve in this case may result in the judgment of the Court discharging this gentleman from the terrible punishment with which he is threatened. Surely he has suffered much in this situation. Although he may have been too sanguine, he was never, in my submission, guilty of a fraudulent or false statement."

Mr. Justice Avory, after consulting the other Judges, said: "As this case requires consideration, we will give judgment to-morrow morning."

THIRD DAY'S PROCEEDINGS.

The Judgment.

Mr. Justice Avory, who delivered the judgment of the Court, said the indictment was under section 84 of the Larceny Act, 1861, and in the first two counts it charged Lord Kylsant with publishing accounts that he knew to be false in a material particular, he being a director of the Royal Mail Steam Packet Company Limited, with intent to deceive shareholders. The third count charged him that he, as a director of that company, published a prospectus inviting subscriptions to a debenture issue with intent to induce persons to subscribe or advance money to the company. Before the appellant pleaded an application was made by Sir John Simon on his behalf that further particulars should be given by the prosecution about matters alleged in that document to be false. Mr. Justice Wright adjourned his decision on that application until he had heard the opening of the case for the prosecution. At the close of that opening Sir John Simon said: "With regard to the request I made earlier in the day, I have been following closely what the Attorney-General has said, and I have his assurance that what he proposes to submit at the end after the evidence is called is what he has opened here. I think it is only reasonable to say that that gives me the particulars I am entitled to, and I do not wish to put the Crown to any further trouble." Mr. Justice Avory quoted passages from the Attorney-General's opening "in order to appreciate the effect of that concession." The Court was not saying that concessions as to particulars in any way precluded Counsel making his further argument on the construction of section 84 of the Larceny Act. In the result the appellant was acquitted on counts one and two and convicted on count three.

"In case it should be thought that there is any apparent inconsistency in the verdict of the jury," proceeded the Judge, "we think it right to say that, with regard to counts one and two, the jury may have thought that existing shareholders had some information from the published accounts which the outside public had not, particularly in view of the fact that in the profit and loss accounts for these years and previous years there had been some indication of what was called an adjustment of taxation reserves—a somewhat abstruse expression which gave rise to considerable discussion during this case. Coming to count three, on which the appellant was convicted, the prospectus in question was issued on June 29th, 1928. The subscription list was opened on July 3rd and closed on or before July 4th. It was an issue of 5 per cent. debentures at £92 10s., and, in fact, was over-subscribed."

Mr. Justice Avory read the material parts of the prospectus, and said it stated that the dividends upon the ordinary stock of the Company during the years from 1911 to 1927 had varied from 5 to 8 per cent., but in 1926 the figure was 4 per cent., and in 1927 5 again. One of the purposes for which the debenture issue was made appeared to have been to pay off the bank overdraft. This had been agreed with the bank in 1926 at £500,000, and it had been renewed from time to time for short periods upon the promise to make the new issue, from which the bank hoped to be repaid.

"We now come to consider," added Mr. Justice Avory, "the grounds of appeal in this case. They are:—

> "(1) That there was no evidence that the appellant made or published, or concurred in making or publishing, a written statement which was false in any material particular.
>
> "(2) That there was no evidence that he made or published that prospectus knowing it to be false in any material particular.
>
> "(3) That there was no evidence that he made or published a prospectus which he knew to be false in a material particular with intent to induce persons to entrust or advance property to the Royal Mail Steam Packet Company."

The third ground, said his Lordship, was immaterial, because it was now admitted that if it were published, and was false and known to be false, there could be no doubt it was published with intent to induce persons to "entrust or advance property to the company." Those grounds of appeal were supplemented by the further ground that the Judge at the trial had misdirected the jury. It was contended that he should have directed them that there was no evidence that the prospectus contained any false statement, and the appeal set out certain extracts from the summing-up which, it was complained, were wrong, and amounted to a wrong direction in law. Mr. Justice Avory read part of the summing-up, in which Mr. Justice Wright referred to the words of the section of the Act, and told the jury his conclusion as to their meaning. This was one of the passages complained of by Lord Kylsant. Mr. Justice Wright told the jury that in his view the section was not limited to a case where a written account or statement could be pointed to with a definite charge that the figures or words were false. It was true that a section of a criminal Act must be strictly construed, but it must be reasonably construed. "In my view," the summing-up went on,

"to construe it in that limited way would be to shut out the type of fraud in an account . . . which might be of the utmost importance." Then followed another long extract, which, said Mr. Justice Avory, it was not necessary to read in full, but it contained this passage, which was relied upon as a misdirection in law. "Was the form which was adopted here, and which erred by reticence, deliberately adopted with an intention to deceive? Was it not merely a case of prudent and well-advised reticence but a case of malignant, deliberate, wicked and treacherous deceit in order to defraud?" The Judge went on to say that it was one of those difficult cases which occurred from time to time in company transactions where a document was put forward in a form which, though it stated every fact correctly fact by fact, yet the true effect of what was said was completely false and completely misleading. Mr. Justice Wright then told the jury that they were not concerned with civil liability, and, having read the indictment, he told them that it was entirely a question for them whether the document was published innocently or with the design of criminally misleading people.

Mr. Justice Avory remarked that the extracts he had read were followed by further passages, in which Mr. Justice Wright said:—

> "As we all know, though a debenture holder, in a sense, is secured by the assets in certain events, yet a man who takes debentures is not thinking wholly of that . . . he thinks of the income that will be yielded to him year by year from the earnings of the company. Therefore it seems common sense that a man would not invest in a company at a time when it has had a record of unfruitful work for some years past, however much it may have had of special credits to keep it going and provide dividends. That may be perfectly true, but you have to go a step further, and consider the real aspect of these accounts. You have to consider, assuming that you are satisfied that it was in truth and fact a misleading document, was it deliberately concocted with the intention of stating certain things and not stating other things so that anyone reading what was said, not knowing what was not said, would be deluded and deceived as to the true state of the company? It is said by Lord Kylsant that he knew what the position had been and what the earning capacity had been, and he was saying 'there are well secured assets here, the company is in the trough of the wave now, and things will soon improve and all will be well.' That is a matter which you will have to take into account . . . bearing in mind that it is always possible to be wise after the event. It is not a question whether what was done was within strict business lines, whether what was done was strictly honourable. It is a question whether an offence was committed under this penal section. . . . This document only forms the basis of a charge for fraud if you are satisfied, as I have said more than once, that there was a deliberate, wicked and criminal intent to concoct a false and misleading document."

Mr. Justice Avory referred to authorities "which in our view," he said, "support the view of the law expressed by Mr. Justice Wright." In a case in 1900 concerning a company and its prospectus Lord Macnaghten said: "It is a trite observation that every document as against its author must be read in the sense it was intended to convey, and everybody knows that sometimes half the truth is no better than a downright falsehood."

In another case, when the House of Lords were construing the effect of the prospectus of a company which was formed to take over the business of another company, Lord Chelmsford said: "It cannot be denied that if the condition of the firm had been disclosed the result must have been their stoppage and no hope would have been entertained of stabilising a joint stock company on the basis of a concern in such a state. The foundation of the projected company was therefore necessarily laid in concealment, and to render the scheme attractive to the public the promoters were not only compelled to hide the truth, but to give such colour to the statements put forth in the prospectus as to render them, though perhaps literally true, yet, in the sense in which they must have known them to be understood by the public, to be really false."

Lord Halsbury, in a case in the House of Lords in 1896, said: "I protest against being called on only to look at some specific allegation in a prospectus. I think one is entitled to look at the whole document and see what it means taken together. I should ask, taking the whole thing together, was there first misrepresentation? I don't care by what trick, or device, or ambiguous language—those are the expedients by which fraudulent people seem to think they can escape from the real substance of the transaction. If by a number of statements you intentionally give a false impression and induce a person to act upon it, it is not the less false, though, if one takes each statement by itself, there may be difficulty in showing that any specific statement is untrue."

"In the opinion of this Court," said Mr. Justice Avory, "these authorities are sufficient to support the summing-up of Mr. Justice Wright so far as it consisted of any direction on the question of law arising in this case. It is true that they are opinions expressed in civil proceedings, but we think they are none the less applicable in this case, particularly in view of the fact that in the last case Lord Halsbury had in mind and gave expression to his view as to the criminal as well as the civil liability. In the present case we find that the Judge on more than one occasion specifically called the attention of the jury to the distinction they must bear in mind between a possible civil liability and a criminal liability, and in the opinion of this Court there was ample evidence upon which the jury could come to the conclusion that this document, the prospectus, was false in a material particular, in that it conveyed a false impression. The falsity in this case consists in putting before intending investors, as material upon which they can exercise a judgment as to the existing position of the company, figures which apparently disclose the existing position, but in fact conceal it. In other words, the document implied that the company was in a sound financial position, and that a prudent investor could safely invest in its debentures. This implication arises particularly from the statement that dividends have been regularly paid over a term of years, although times have been bad—a statement which is entirely misleading—and the fact that they were not paid out of current earnings, but out of earnings in the abnormal war period, is omitted.

"The further question is whether there was evidence upon which the jury could properly find that the appellant knew that this document was false. If there was evidence that the document was false in the particulars already indicated, there was ample evidence upon which the jury could find that the appellant knew of its falsity, knowing as he did of the means by which the dividends had been paid. It is not and cannot be disputed that the prospectus was published with intent to induce persons to entrust or advance money to the company, which was sufficient to satisfy the section. The Judge told the jury that on the third count also they must find the intention to defraud, and he repeated this after the jury had retired and sent their written question to him. In these circumstances the jury must be taken to have found that what was done in this case was done with the intent to defraud.

"In the result we come without hesitation to the conclusion that in the summing-up, regarded as a whole, there was no misdirection; that there was ample evidence upon which the verdict of the jury can be supported, and that this appeal must be dismissed."

Mr. Singleton called attention to the fact that there was an appeal also against the sentence.

Mr. Justice Avory said the Court had considered that matter, but would hear anything that Counsel had to say.

Mr. Singleton said he desired to add a word, though not on the express instructions of Lord Kylsant, to whom the conviction was the great thing that mattered. "The Court knows his age, and has seen his record in public and private life. Lord Plender, in the course of his evidence, said that Lord Kylsant had offered every possible facility from the time inquiries were set on foot. Sir William McLintock agreed that that was so. The debenture issue was in June, 1928. Thereafter the company paid a dividend which would have entitled Lord Kylsant to draw a commission, but he did not draw it because he did not wish to do so."

After a short consultation between the three Judges, Mr. Justice Avory observed that the Court could see no reason why the sentence passed on the appellant should be altered.

The appeal against the sentence was also dismissed.

CHARTERED INSTITUTE OF SECRETARIES.

ANNUAL DINNER.

The fortieth anniversary of the foundation of the Chartered Institute of Secretaries was celebrated at the annual dinner held at the Guildhall on November 24th. The guests and members were received in the Art Gallery by the President, Mr. Edward Wilshaw, and Mrs. Wilshaw, who were supported by Mr. F. Gurdon Palin (vice-president), Mr. W. G. Hislop (treasurer), the Past Presidents, and Mr. C. H. Isdell-Carpenter, O.B.E. (secretary).

The guests included the Lord Mayor (Sir Maurice Jenks), the Lady Mayoress, the Earl of Midleton, Viscount Leverhulme (President of the London Chamber of Commerce), Mr. Henry Morgan (President of the Society of Incorporated Accountants and Auditors), Mr. Thomas Keens (ex-President), Lord Plender, Sir Gilbert Garnsey, and Mr. A. A. Garrett.

After the loyal toasts had been honoured, Brigadier-General Sir Arthur Maxwell, K.C.B., C.M.G., D.S.O. (President of the Institute of Bankers and a Past President of the Chartered Institute of Secretaries), proposed the toast of "The Corporation of London," and congratulated the Lord Mayor upon his election to the highest office in the City of London.

The Lord Mayor (Sir Maurice Jenks), in acknowledging the toast, said it gave the Corporation pleasure that the Chartered Institute of Secretaries held its annual dinner in the Guildhall. As a member of the accountancy profession, he referred in appreciative terms to the high standard of the work of Chartered Secretaries in their capacity as executive officers of public companies. He considered the burden placed upon auditors would be much heavier if the secretaries' work were less well done. Speaking in the presence of their President, Mr. Edward Wilshaw—who, he reminded them, was general manager and secretary of Cables and Wireless, Limited—the Lord Mayor referred to the recent extensions in communication by wireless and to the pleasure he had experienced in a conversation by wireless with Sydney, New South Wales.

The Very Rev. W. R. Inge, K.C.V.O., D.D., Dean of St. Paul's, in a witty speech proposed the toast "The Chartered Institute of Secretaries," and congratulated the Institute upon its membership and the fortieth anniversary of its foundation.

The President (Mr. Edward Wilshaw), in reply, thanked Dean Inge on behalf of his fellow members for the happy speech in which the Dean had proposed "The Institute." Mr. Wilshaw said the interest of that function was augmented by the kindness of the Corporation in permitting them to meet in that historic hall. To all of them, and particularly to those whose work was in the City of London, the associations of the Guildhall would not be lost. He felt personal pride in presiding over a gathering of members of his own Institute and of many distinguished guests, among whom he mentioned the whole of the directors of the company which he had the honour to serve. It remained for him, in bringing to a close, as he shortly would, his year of office, to record his personal thanks to the Secretary and members of the staff of the Institute for their loyal service to him and to his colleagues on the Council.

Mr. F. Gurdon Palin (Vice-President) proposed the toast of "The Guests." He particularly welcomed the Lord Mayor and Lady Mayoress and the Earl of Midleton, whose distinguished service to the country in many capacities—including that of Secretary of State for War—would be well remembered.

The Earl of Midleton, K.P., responded.

During dinner a programme of music was furnished by the band of the Royal Regiment of Artillery, and afterwards the Lord Mayor's Boy Players (founded in 1419 and re-established at the instance of H.M. King George V) gave a number of part-songs, the soloist being Edward Handel, a descendant of the famous composer.

Changes and Removals.

Mr. James Hope, Incorporated Accountant, announces a change of address to 33, Bolton Street, Bury.

Mr. Benjamin Lloyd, Incorporated Accountant, has commenced public practice at Holloway Chambers, Priory Street, Dudley.

Messrs. James L. & F. S. Oliver, Incorporated Accountants, have removed their offices to 18, Grainger Street West, Newcastle-on-Tyne.

Mr. J. Bruce Polwarth, Incorporated Accountant, announces a change of address to 117, Chandos House, Palmer Street, Westminster, London, S.W.

Messrs. H. Rainsbury & Co., Incorporated Accountants, have removed their offices to 20 and 21, Broad Street Avenue, Liverpool Street, London, E.C.

Messrs. W. Shand & Co. have removed their offices to Yorkshire House, 14, Spring Street, Sydney, Australia.

Messrs. Alex. Thal, White & Co., Incorporated Accountants, announce that the partnership has been dissolved. Mr. Alex. Thal will practise in future at United Buildings, 53-55, St. George's Street, Cape Town, under the style of Alex. Thal & Co., and Mr. Kenneth White will practise at Court Chambers, Keerom Street, Cape Town, under the style of Kenneth White & Co.

Mr. George F. Whiteley, Incorporated Accountant, has commenced to practise at 14, Northgate Chambers, Dewsbury, and at Ossett.

Incorporated Accountants' Hull and District Society.

ANNUAL DINNER.

The first dinner of the Incorporated Accountants' Hull and District Society was held in the Reception Room at the Hull Guildhall, on November 20th. There was a large attendance of members and their ladies, as well as of the chief figures in the civic, professional and commercial interests of the city and port. The local President, Mr. George A. Ridgway, F.S.A.A., who was accompanied by Mrs. Ridgway, was in the chair, and he was supported by Mr. Henry Morgan, F.S.A.A. (President of the Society of Incorporated Accountants and Auditors), and Mrs. Morgan, the Lady Mayoress (Mrs. R. W. Wheeldon), the Sheriff and Sheriff's Lady (Mr. and Mrs. Edwin Robson), the Stipendiary Magistrate for Hull (Mr. J. R. Macdonald, O.B.E.) and Mrs. Macdonald, Dr. H. Woodhouse, C.B.E., M.A., LL.D. (Clerk of the Peace) and Mrs. Woodhouse, Mr. W. J. Stuart (Under Sheriff), Mr. C. H. Pollard, F.S.A.A., F.I.M.T.A. (City Treasurer) and Mrs. Pollard, Mr. R. C. Moore, M.A., M.Sc., M.Ed. (Director of Education), Major J. E. D. Stickney, D.S.O., M.C. (Official Receiver) and Mrs. Stickney, Mr. H. S. Henderson, J.P. (President of the Hull Corn Trade Association) and Miss Henderson, Mr. W. Hugh Stephenson, J.P. (President of the Hull Chamber of Commerce), Mr. A. J. Downs, F.C.A. (President of the Chartered Accountants' Students Society, Hull) and Mrs. Downs, Mr. R. H. Micks, J.P. (Chairman of the Hull Exchange), Mr. J. Murray (Inspector of Taxes, Hull 1st District) and Mrs. Murray, Mr. J. McGeorge (Inspector of Taxes, Hull 2nd District), Professor A. E. Morgan, M.A. (Principal of the Hull University College) and Miss Morgan, Mr. W. V. Cavill, M.C., M.A. (Headmaster of Hymer's College), Mr. Ernest E. Edwards, B.A., LL.B. (Parliamentary Secretary, Society of Incorporated Accountants and Auditors), Mr. W. J. Almond (District Valuer) and Mrs. Almond, Capt. E. D. Roberts (Governor, Hull Prison) and Mrs. Roberts, Mr. Hugh Farrell, M.A., LL.B. (Deputy Registrar, Hull County Court) and Mrs. Farrell, Mr. W. M. Law (French Consul) and Mrs. Law, Mr. Joseph Turner, F.S.A.A. (President, Manchester and District Society Incorporated Accountants and Auditors) and Mrs. Turner, Mr. W. Tate, F.S.A.A. (President, Incorporated Accountants' District Society of Yorkshire) and Mrs. Tate, Mr. Leslie, F.S.A.A. (President, Sheffield and District Society of Incorporated Accountants and Auditors) and Mrs. Lewis, Mr. A. E. Stringer, F.S.A.A. (President, Bradford and District Incorporated Accountants' Society) and Mrs. R. Ellis, Mr. W. H. Stalker, F.S.A.A. (President, Newcastle-upon-Tyne and District Society of Incorporated Accountants and Auditors) and Mrs. Stalker, Mr. S. Scotter, F.S.A.A. (Vice-President, Incorporated Accountants' Hull and District Society), Mr. A. H. Crumpton, A.S.A.A. (Secretary, Incorporated Accountants' Hull and District Society), Mr. and Mrs. H. K. Byrne, Mr. and Mrs. E. Oughtred, Mr. B. H. Clark, Mr. and Mrs. P. H. Christie, and Mr. H. G. Ingham.

After the toast of "The King" had been honoured,

Mr. J. R. MACDONALD gave the toast of "The City and County of Kingston-upon-Hull." He made special reference to the freedom of the city from serious crime, and said even with regard to drunkenness, if he had to deal with three cases in a day it was a heavy list. If, however, they consulted the Magistrates' lists of 20 or 30 years ago, they would find that there were 60, 70 and even 100 cases of drunkenness in a day. During the seven years he had been in Hull there had been only one instance of murder, while there was practically no manslaughter and mighty little robbery with violence.

The SHERIFF responded—the Lord Mayor (Alderman R. W. Wheeldon) being unable to be present owing to an urgent call to London on business. He mentioned that Hull was the cheapest port in the United Kingdom, and advised accountants to recommend Hull to their clients who were on the look-out for new factory sites. Referring to the fact that one of the principal industries of the port was milling, he said that many years ago the streets used to be littered with whale oil. His grandfather and father were the owners of the last whalers which sailed out of the port.

Major STICKNEY proposed the toast of "The Society of Incorporated Accountants and Auditors" in a witty speech, in which he gave an original version of the origin of after-dinner speaking; he said such occasions as that gave them a splendid opportunity for meeting men of eminence in their own and other professions. He also referred with pleasure to the presence of the ladies, and disclosed the fact that the Chairman had recently accepted as a partner a member of the gentler sex—his daughter.

Mr. HENRY MORGAN, replying to the toast, said he was an optimist in regard to the Society of Incorporated Accountants and Auditors, and there was no more pleasant or permanent feature of their Society than the progress and growth of their District Societies. It was one of the pleasureable functions of a President to attend the annual gatherings of District Societies. In point of years, Hull was one of the babies of their District Societies, but in the three years since it was established it had made very considerable progress, and had done great work in advancing the interests of the Society and its members. If any evidence of that fact was needed surely it was provided by the successful function that evening, honoured as it was by representatives of the Civic life and of the commercial and professional interests of that very important city. He would look back with pleasure on his first visit to Hull. It was just six months since their annual meeting, when he last had the privilege of addressing a gathering of Incorporated Accountants. During that period an event had occurred (he referred to the *Royal Mail Steam Packet* case) which must have a most important bearing upon the position of all practising members of the accountancy profession, one of whom—a distinguished and honourable member—had been completely vindicated. The course of the proceedings and the summing-up of Mr. Justice Wright, however, had raised anew the vital question as to the extent of the responsibilities and obligations of auditors of public companies.

THE QUESTION OF SECRET RESERVES

Mr. Morgan continued: "The existence of secret reserves in the case of many powerful and important corporations and companies has been a matter of general knowledge among the investing public, but although in the case of certain large financial institutions the practice may have certain advantages, it can be, and frequently has been, subject to very serious abuse. It should be borne in mind that a secret reserve can arise only through an understatement of profit, and in no other way, and it cannot be denied that balance sheets or profit and loss accounts which are affected by secret eserves are untrue to the extent of such reserves.

"In a year when a secret reserve is created the balance sheet is incorrect because liabilities are overstated or

assets are understated, and the profit and loss account is incorrect because the profit is understated. In a year when a secret reserve previously created is continued, although the profit and loss account for that year would be correct, the balance sheet is incorrect. In a year when a secret reserve is utilised, then, although the balance sheet again becomes correct, the profit and loss account is incorrect because the profit is overstated or the loss is understated, as the case may be.

"Among some people the idea seems to prevail that it is permissible, and indeed commendable, to show a company's position as being less favourable than it really is, but whatever justification there might be for the creation of secret reserves, their utilisation without disclosure cannot be defended because the position disclosed by the accounts is then more favourable, the profit shown being greater or the loss less (as the case may be) than the actual. If it were made obligatory to disclose the fact whenever secret reserves have been drawn upon to increase the profit or minimise the loss shown by the profit and loss account, then I think that little would be heard from the advocates of secret reserves.

"However straight and honest the intention may be, it cannot be disputed that the effect, and I go so far as to say that in many cases the object, of creating a secret reserve is to withhold from shareholders and the public knowledge as to the company's actual position and earning capacity. Conditions during the last few years must have convinced everyone as to the vital importance in prosperous times of creating substantial reserves, but I contend that shareholders have a right to be fully informed in regard thereto, because otherwise they cannot rely upon the balance sheet and accounts.

"I am aware that among practising accountants there is a considerable divergence of opinion regarding the propriety of secret reserves. I have heard leading accountants express the view that provided the creation, existence or utilisation of a reserve is noted in the accounts, the non-disclosure of the actual amount is justifiable, but it is my personal opinion that it is not consistent with the statutory form of the auditor's certificate, which in such case I consider should be qualified by the use of words such as 'subject to the non-disclosure of the amount of the reserve referred to in the balance sheet or profit and loss account' as the case may be.

"The intention of the Companies Acts, I contend, is clear—that shareholders are entitled to receive accurate, true and reasonably informative balance sheets and accounts, and it must be emphasised that the statutory form of certificate to be signed by the auditor has to state that in his opinion the balance sheet 'shows a true and correct view of the state of the company's affairs.' How can such a certificate be consistent with a balance-sheet in which there are included secret reserves? If it can be reasonably contended that the obligation to issue true, correct and reasonably informative balance sheets and profit and loss accounts is disadvantageous, it is a small price to pay for the many advantages enjoyed by public companies which are enabled thereby to raise such enormous sums from the investing public.

"The argument is frequently put forward that in a time of exceptional prosperity it is in their own interests that shareholders should be kept in the dark as to the full extent of the profit that has been earned, because otherwise there may be a demand for distribution of excessive dividends or the market price of their shares on the Stock Exchange might be rushed up to an unjustified figure. If ever there were sound ground for such an argument it cannot hold good to-day because a large proportion of shareholders are not so uninformed and incapable as such an argument would suggest, and those less capable rely upon the advice and opinion of bankers, stockbrokers, solicitors, accountants, and more especially upon the views expressed by able and experienced experts on company matters in many leading financial newspapers and journals.

"Speaking in the House of Commons last week, Mr. Baldwin referred to the need of providing capital for the resuscitation of our productive industries and the establishment of new enterprises. One of the most serious difficulties to be faced at the present time is the general lack of confidence, and this is nowhere more apparent than in the case of the investing public, the chief source from which our industries can draw the capital they so urgently need. The public investor will not readily forget the outrageous manner in which he was exploited two or three years ago in connection with companies formed for the purpose of establishing new industries and businesses, and for that reason I maintain that revision of the Companies Acts should be allotted a prominent place by the National Government in its programme of reconstruction." In conclusion the President thanked Major Stickney for the able way he had proposed the toast, the ladies for the patience they had shown in listening to his discourse on what must be to them a very dry and uninteresting subject, and the guests and members for the welcome they had given him.

The CHAIRMAN, in proposing the toast of "The Guests," made reference to the fact that it was 43 years ago when he had first walked into Bowlalley Lane, Hull, and commenced business as a clerk in an accountant's office. He also mentioned that in 1905 and 1906 he had had in his own office as a young pupil, Mr. Phillip Lloyd-Greame, who was now Sir Phillip Cunliffe-Lister. The toast was responded to by Dr. WOODHOUSE and Mr. MURRAY, both of whom warmly thanked the Hull Society for their generous hospitality.

BANKER'S CLAIM AGAINST LIQUIDATOR.

Arthur H. Brandt & Co. v. William Henry Cork.

In the House of Lords last month, Lords Buckmaster, Atkin and MacMillan dismissed the appeal of Arthur H. Brandt & Co., merchant bankers, Fenchurch Street, from an Order of the Court of Appeal, which reversed a judgment of Mr. Justice Clauson, who decided that William Henry Cork, accountant, Eastcheap, should pay the appellant £6,105 2s. 7d., with costs.

Mr. Cork is the liquidator of De Dion Bouton, Limited, which went into voluntary liquidation in March, 1927. The business of the De Dion company had consisted in importing from France motor car and commercial vehicle chassis for the purpose of sale in England. The ready money required to pay for the import transactions was provided by Robertson & Malcolm, Limited, who were themselves financed for this purpose by Brandt & Co. The course of business had been for Robertsons to draw bills on the De Dion company and then to draw a bill on Brandt & Co. for a similar amount which, on being accepted, was discounted in the market and the funds handed to the De Dion company. The De Dion company's acceptances were deposited by Robertsons with Brandt & Co. as collateral security.

At the date of the liquidation of the De Dion company there was in England a number of chassis in a bonded warehouse, the warehouse receipts being in possession of Robertsons, who were entitled to a charge on them. On the liquidation, Robertsons gave Brandt & Co. the warehouse receipts, and they were afterwards entrusted to Mr. Cork with a view to his disposing of the chassis for Brandt and Co. in the ordinary course of business, Brandt & Co. receiving trust letters.

From time to time Brandt & Co. advanced sums amounting to £2,205 2s. 7d. in respect of duties and charges payable on the chassis, and from time to time Mr. Cork permitted certain of the chassis to go out of his possession for the purpose of being fitted with bodies and offered for sale.

In his defence to the action, Mr. Cork denied that he was personally liable on the trust receipts, alleged that the chassis were sold by Brandt & Co. themselves, or by their agents Robertson & Malcolm, Limited, to Johnson & Neal, Limited, without Mr. Cork's knowledge or assent, and that in this way it was rendered impossible for him to perform his obligations under the trust receipts.

Mr. Justice Clauson gave judgment for Brandt & Co. for £6,105 2s. 7d., of which £3,900 was in respect of thirteen chassis. This decision was reversed by the Court of Appeal on the ground that the conduct of Brandt & Co. as from the date of the sale to Johnson & Neal had released Mr. Cork from his liability under the trust letters.

Mr. W. P. Spens, K.C., and Mr. H. S. G. Buckmaster were for Brandt & Co; Mr. Gavin T. Simonds, K.C., and Mr. Cyril Radcliffe were for Mr. Cork.

Lord Buckmaster, in moving that the appeal should be dismissed, said one of the letters made perfectly plain the fact that Brandt & Co. not only knew of the sale to Johnsons, but were treating the sale of one car as outside the transaction and were retaining possession of the bills given by Johnsons to cover the purchase price of chassis sold to Johnson & Neal. In other words, they were with knowledge of sale receiving and retaining a negotiable instrument given as part of the purchase price, and by this means deriving benefit from the transaction which they now sought to repudiate. The benefit they obtained proved to be illusory, but that could not deprive the transaction of its true effect, which was to prevent Brandt & Co. from repudiating a transaction which by their conduct they had approved.

Lords Atkin & Macmillan concurred, and the appeal was dismissed with costs.

Professional Honour.

Mr. Fred Woolley, J.P., F.S.A.A., member of the Council of the Society of Incorporated Accountants and Auditors, was on November 9th elected Mayor of Southampton. Mr. Woolley has also held the appointment of President of the Southampton Chamber of Commerce.

Professional Appointment.

Mr. William Adams, A.S.A.A. Deputy Borough Treasurer of Wolverhampton, has been promoted to the position of Borough Treasurer, consequent upon the appointment of Mr. J. Boydell as City Treasurer of Nottingham.

"GOLD AND THE PRICE LEVEL."*

Sir Josiah Stamp's New Book.

The remarkable combination which goes to the making of a perfectly balanced organ, with its open diapason—lieblich bourdon, dulciana, harmonic flute, echo gamba, viox celeste—and other not less delightful notes, is not more remarkable than the combination of talents and graces which have gone to the making of the harmonious and wonderfully balanced personality of Josiah Charles Stamp.

Sir Josiah is for ever opening doors to new avenues of thought—lifting the blinds of the mind to fresh vistas never before quite properly appreciated—placing facts and figures in a new light so that for the first time we really apprehend their true significance. He is immediately at one with his audience, or his reader, whether he is addressing the Stable Money Association at New York on the "Price Level," or the Farmers' Club, in this country, on "Agriculture and the Price Level," or a Chamber of Commerce on "Trade Depression—its Causes and Cure." The same lucidity, with perhaps just a little stronger technique, is discernible in his contributions to the *Spectator* or the *Economic Journal*. Like Gide, of the older school of economists, or Hartley Withers, of the newer school, Sir Josiah writes so alluringly that the reader passes on from one point to another without that sense of strain which is not infrequently experienced with other authors in the economic school of thought.

In the course of a weighty preface to this new volume on "Gold and the Price Level," Sir Josiah writes:—

> "I have been to much trouble to enumerate eighteen valid but not always universal causes of the great depression" [set out in detail on pages 56 and 59], "including such widely differing elements as too much rationalisation, too little rationalisation, taxation, devalorisation of silver, trade and labour restrictions, excessive relative production of certain commodities, the new kind of stock market and boom of New York, reparations and debts. I have been at pains to indicate that, in my view, there is plenty of gold for some time to come, properly used, to support a satisfactory price level, and that the gold problem is really one of proper distribution and scientific use by the best international science."

Our author justly complains of the lack of interest in these matters on the part of the general business community, writing that a statement "after dinner" that the change in the price level in the last three years "has increased the burden of the National Debt by over a thousand millions" . . . "is treated on much the same level as an interesting anecdote."

He stresses the point that what the world wants is a stable level of prices, and that it is really immaterial whether it be high or low so long as all the factors have been adjusted to that level. It will be remembered that it was owing to the action of Sir Josiah Stamp that provision was made in the Dawes Plan

* "Papers on Gold and the Price Level." By Sir Josiah Stamp. London: P. S. King & Son, Limited, 14, Great Smith Street, Westminster, S.W.1. (127 pp. Price 7s. 6d. net.)

for adjustment if the price level should change by 10 per cent.

It is startling to learn that the National Debt has increased in real weight by some 1,500 million pounds, and now "substantially represents wealth in excess of the real sum that was originally lent." "This burden," says he, "will become positively crippling if the decline in prices is not arrested."

Throughout the book emphasis is laid upon the fact that the danger is in the "transition" from one price level to another price level. This it is which works injustice and introduces disturbing factors into business. Attention is directed to the increase of some 40 per cent. in the purchasing power of the £ during a period of 25 years before the War, and to changes during more recent years.

How these affect the business man and the interest receiver, in opposite directions, is fully discussed in Chapter IV, where Sir Josiah pays high tribute to the work of Sir Henry Strakosch.

The uneven distribution of the gold reserves (page 42) is quoted as follows :—

Argentine ..	£9	4	0	per head of the population,
France ..	£8	0	0	do.
U.S.A. ..	£6	7	0	do.
Great Britain	£3	3	0	do.

"How," asks Sir Josiah, "could a landslide be avoided when the whole of the 1929 supply was absorbed by the U.S.A. and France, and altogether 110 million pounds abstracted for real price significance from the gold using countries?"

The position of gold and the United States is adequately summed up in the following passage :—

> "But the value which gold possesses is unconsciously influenced by national currency policy. I have often declared that under present conditions the United States represent a positive siphon for gold. Large sums are due to be paid annually for interest on commercial development loans to other countries and also on the war debts. The United States have no desire to be on balance an importing nation. They do not readily admit a surplus of commodities and manufactures from the debtor countries. One commodity which is, however, admitted without question is gold, and therefore gold tends to flow inevitably to the United States through irresistible economic suction. But when it is received it is necessary to keep very careful watch over its influence upon the internal price level as a basis of currency, and the only way to keep the price stable in the States with a continuing inward flow of gold is to put the gold aside and not to allow it to function as the basis of increased credit. It is for this reason that the amount of gold per head of the population in the United States, despite a highly developed credit and banking system, is twice as great as is necessary in Great Britain, or nearly four times as great as in the civilised world in general, only exceeded by France and the Argentine. Now holding idle gold is an expensive matter. Instead of receiving goods which people can use and enjoy, the United States to that extent receives a metal which is so inconvenient that it must be put away. Its banking system holds a large quantity of sterile assets in place of earning assets, and this is in the long run a charge on the community."

Referring to the difficulties of the export coal trade, created by a return to the Gold Standard before we were in a position to make the necessary internal adjustments, the author writes :—

> "I have not ceased since, in and out of season, to protest that until the world had learnt the *international* rules of the game, rapid changes in a gold price level would be a bigger menace to Great Britain than to any other country, only to be countered successfully by an elasticity of industrial and financial factors which seemed politically unattainable."

Later, speaking of the curtailment of the demand for employment, the author quotes Sir Henry Strakosch :—

> "The phenomenon is due, not to 'over-production,' but to the retardation in the process of exchange, and therefore of consumption, caused by a drastic re-distribution of wealth resulting from the fall in the general price level of commodity prices which, in turn, owes its origin to an inadequate supply of currency and credit."

Sir Josiah pays a generous tribute to the work of Mr. Keynes in the same line of research :—

> "I found that Mr. Keynes had approached the matter in a similar way, and that, apart from the two of us, everybody else had assumed the future price level for wheat was a problem in the supply and demand for wheat. It is, of course, a problem for supply and demand, if the gold price level is stable, but if not, it is primarily a currency problem, and if one is thinking of a problem over a long period it is essentially the latter aspect that is important."

Discussing the supply of the precious metals in relation to the growth of manufactures and commerce, Sir Josiah says :—

> "In the middle of the nineteenth century we had the Australian and Californian gold discoveries which caused an immediate and rapid rise in the price level. In the early seventies this had spent itself, and from then until the middle nineties, say, 25 years, there was a drop of 40 per cent. in the general price level."
>
> "With regard to present prospects," says he, "let us suppose we continue with a long downward drag in prices due to: (*a*) the deficiency of new gold supplies as measured against advances in manufacturing output; (*b*) mal-distribution of gold supplies as a basis of credit causing an artificial shortage of effective basis; (*c*) lack of resourcefulness and invention in banking and financial practice, in establishing new volumes of credit on existing gold; (*d*) inability to bring in auxiliary standards of value and credit. If for any of these reasons prices continue to fall rapidly then the worst effects must be felt in countries or industries where (*a*) there is much fixed indebtedness in terms of money; (*b*) there are large social costs which have become ingrained in practice; (*c*) the various costs of production, such as wages, rents and repairs, are very rigid and do not rapidly adapt themselves."

Sir Josiah in speaking before the members of the Oldham Chamber of Commerce, made his position with regard to tariffs very clear in the following words :—

> "Nearly twelve months ago, when I was giving evidence to the Macmillan Committee, I said that the time had come when we must give serious attention to the remedy of a general tariff, not for the usual protective reasons, but taken generally over all imports. My desire was to produce the same effect upon prices as nearly as possible as a general rise in the price level, due to currency devices. . . I am fully alive to the validity of the historic objection to tariffs; that no one has ever had the intelligence or the pluck to take them off at the right time. This objection is perfectly sound; but if at the outset the tariff is made dependent upon the very change in the price level which has made it necessary, the onus of action by the legislature will be to reimpose and not to take off. Economists have always recog-

nised that a properly arranged tariff may secure gains for a time, or prevent damage, but up to now these advantages have never been worth the risks involved. Those risks arise, first, from the universal experience that a tariff cannot be properly devised by our political machine in the single economic interests of the country and kept politically undebauched, *i.e.*, that a tariff is never actually economically wise; and, in the second place, that no political machine can be trusted to remove duties at the economic moment."

He adds—

"In the ordinary way it is quite true to say that the diminution of imports must reduce exports, but I am satisfied that the conditions now existing will permit of this effect not necessarily taking place for several years at least, during which we may look for considerable relief of the strain on the monetary position of London which comes when we lend vigorously, as we ought to do. The relief of this strain alone in its effect on confidence and on our financial standing abroad is a factor worthy of some risk and sacrifice."

Sufficient has been said to indicate the value of the book to all serious students of monetary and trade questions. It is written by a master mind, gathering up all the threads of the problems dealt with, and presenting conclusions which, in the opinion of the present reviewer, are irresistibly convincing.

Reverting again to our opening remarks, it may not be without interest to record that the organ which suggested the analogy bears the following inscription:—"This Organ was opened by Sir Josiah Stamp, G.B.E., on 4th May, 1931."

QUESTIONS IN PARLIAMENT.

In answer to a question by Major Nathan respecting the present position as to the redrafting of legislation relating to Income Tax, the Financial Secretary to the Treasury said that a Committee was appointed in 1927 to work upon the simplification and codification of Income Tax law. Considerable progress had been made, and the question of expediting the work was at present under consideration.

The Chancellor of the Exchequer was asked whether he would furnish figures showing what additional Income Tax would be payable by co-operative societies if their profits for 1930 were assessed to tax on the same basis as the profits of the ordinary trader, indicating the assessments on which they already pay Income Tax under Schedules A and B.

Major ELLIOT, who replied, said: A special investigation based upon the trading results of the year 1928 showed that, on the basis of a standard rate of 4s. in the pound, the Income Tax paid by the societies under Schedules A and B fell short by £352,000 of the tax that would be payable if the total undistributed surplus of the societies was made liable to tax. It was estimated that the figure for the current year would be in the neighbourhood of £500,000.

Mr. A. A. Garrett, M.A., F.C.I.S., Secretary of the Society of Incorporated Accountants and Auditors, having completed fifteen years' service, has been retired from the Royal Naval Reserve with the rank of Paymaster Commander, R.N.R.

The Law of Executors and Administrators.

A LECTURE delivered before the North Staffordshire District Society of Incorporated Accountants by

Mr. R. H. MOON,
Solicitor.

Mr. MOON said: The office of executor can only be created by a will, or some testamentary paper or document duly executed as a will. Where there is no will there can be no executor. It is not necessary, however, that the will should be such in form. Documents in the form of letters, deeds, written answers to interrogatories, and memoranda have been admitted to probate as wills. Any such documents must, however, be executed and attested with the requisite formalities.

Executors may be appointed either (*a*) by nomination, (*b*) by implication or construction, and the appointment may be either (*a*) absolute, or (*b*) qualified.

APPOINTMENT BY NOMINATION.

A clause in a will appointing executors may be ambiguous and call for the construction of the Court.

Where there is a doubt as to the person appointed by name by the testator, evidence of surrounding circumstances, but probably not of declarations by the testator, will be admitted to ascertain who was actually intended, but the ambiguity must be real. If the name and description apply to an actually existing person, evidence will not be received to show that some one else was in fact intended.

There have been numerous decisions upon the question of appointment of executors, and reference to these can be made, the scope of this lecture being such as not to allow too lengthy a reference to many of these. An illustration might be taken:—Devise of real and personal estate to A, and appointment of A as sole executor. By a later testamentary paper purporting to be a last will specific property was devised to B, and he was appointed sole executor. Held, A and B were jointly entitled to probate of both papers.

Where A and B were appointed by will executors, and by a codicil C was appointed sole executrix, A and B's appointment was held revoked.

BY IMPLICATION OR CONSTRUCTION.

It must appear on a reasonable construction of the will that the testator intended that the person named as executor, known as "executor according to the tenor," should collect his assets, pay his debts and funeral expenses, and discharge the legacies contained in the will.

Thus, naming a person "to hold and administer in trust all my estate well known to him," or by expressing a desire that a person named shall "pay all my just debts," though all the estate was bequeathed to another person, it was held that such person was appointed executor according to the tenor.

Merely to bequeath the whole personalty to one upon a specific trust does not constitute him executor according to the tenor.

A universal executor is not, as such, an executor according to the tenor, although entitled to administration with will annexed. A person expressly appointed limited executor in a will may be appointed general executor in a codicil by implication.

QUALIFICATION OF APPOINTMENT.

Absolute appointments have already been referred to.

It is clear that a testator is at liberty to qualify his appointment of executors in various ways.

He may appoint one executor for general and another for limited purposes, and he may have different executors for different purposes. For instance, for property in England and for property abroad different persons may be appointed as executors.

By the Administration of Estates Act, 1925, sect. 22, it is provided that a testator may appoint, and in default of express appointment shall be deemed to have appointed, as his special executors in regard to settled land not settled by his will the trustees of the settlement, and probate may be granted to such trustees specially limited to such settled land. He may also appoint other persons with or without such trustees to be his general executors in regard to other property and assets. A testator may appoint executors conditionally only, the condition being either precedent or subsequent.

If in any case the executorship is by these means left vacant, whether temporarily or otherwise, the Probate Court will grant administration with will annexed.

The High Court has power to summon any person named as executor in any will to prove or renounce probate. Where a person appointed executor by a will survives testator, but dies without proving, or is cited to take out probate and does not appear to citation, or renounces probate of the will, his rights in respect of executorship wholly cease, and the representation to testator and administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor.

WHO ARE CAPABLE OR INCAPABLE?

Idiots and lunatics are, of course, incapable. Their disabilities render them incapable of carrying out their office, but they are also incapable of determining whether they would act or not. Proof of weakness of mind will not be sufficient, but if any executor becomes *non compos mentis* the Court would no doubt, on proper representation, commit the administration to another. The King could be appointed, but whether he would act is another question. Infants are capable of appointment, but for obvious reasons are not recommended. A married woman can always be appointed. Outlaws, felons or aliens may be appointed. A corporation aggregate and a corporation sole may be appointed. The Public Trustee is a corporation sole and may accept probate, but in certain circumstances is prohibited from accepting office (see Public Trustee Act, 1906, sect. 2 (4)). A firm may be appointed executors. Probate would be granted to the members of the firm individually.

RENUNCIATION.

An executor can always renounce providing he has done no act to show he has elected to act, such as any act in administration of the estate, or intermeddle with the estate, or collect debts, or realise a portion of the estate. If he cannot renounce he may be cited to take probate, and disobedience to do so would be contempt of Court. An executor cannot accept in part and refuse in part. An executor of an executor cannot renounce the execution of the former will and prove the latter.

When it is said that a man who, being named executor, does executorial acts, *ipso facto* accepts the executorship, that must be understood of acts which he does, so to speak, *in propria persona*. He may excuse himself from accountability *qua* executor by showing that he has acted merely as agent or attorney of those who were named co-executors with him, and that, too, though he has not formally renounced, but he can only so excuse himself when he has not proved the will.

An executor who has proved cannot act in any other character. He cannot renounce his executorship and act only under power of attorney from his co-executors.

Partial renunciation, however, is provided for in the case of settled land where such land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to its vesting in the tenant-for-life, or statutory owner, in order to give effect to a settlement created before the death of the deceased, and not by his will, or would on the grant of representation to him have become so vested. Such representative may (*a*) before representation granted renounce in regard only to the settled land without renouncing in regard to other property; (*b*) after representation granted, apply to the Court for revocation of grant in regard to the settled land without applying in regard to other property.

The trustees of a settlement, or any person beneficially interested thereunder, may apply to the Court for a special or additional personal representative for settled land. A special personal representative may dispose of settled land without concurrence of general representatives, and *vice versa* they may dispose of other property of the deceased.

An instrument of renunciation must state in substance, though not in terms, that the party has not intermeddled. If an executor delays in exercising his option he may be cited to accept or refuse probate. The time he would be allowed is uncertain, and is in the discretion of the Judge. If a party named as executor, administers or intermeddles, he is liable to a penalty if he omits to take probate in six months.

If a debtor makes his creditor and another executors, and the creditor neither proves nor acts as executor, he may maintain an action against the other.

WITHDRAWAL OF RENUNCIATION.

He may retract his renunciation at any time before a grant has passed the seal, but not afterwards. Mere change of mind is not a good ground. In a proper case the Court has jurisdiction to allow an executor to retract even where renunciation is complete, but this will not be allowed unless it can be shown to be for the benefit of the estate or of those interested.

Where an executor, having renounced, has been permitted to withdraw renunciation and prove, probate shall take effect and be deemed always to have taken effect without prejudice to previous acts and dealings of, and notices to, any other personal representative who has previously proved, and memorandum of subsequent probate must be endorsed on original probate. This applies whether death took place before or after January 1st, 1926.

DEVOLUTION OF OFFICE.

On the death of one of several executors the office devolves to the survivors or survivor, the executors of the deceased executor having in such case no interest. On the death of a sole executor or last surviving executor different considerations apply.

An executor may make an executor who shall discharge the first testator's trust. A sole trustee cannot, however, appoint by his will special executors to execute the trusts of a will of an original testator. An executor of a sole or last surviving executor of a testator is the executor of that testator. But this does not apply to an executor who does not prove the will. So long as the chain of such representation is unbroken the last executor is the executor

of every preceding testator. The chain is broken: (*a*) by an intestacy; (*b*) the failure of a testator to appoint an executor; (*c*) the failure to obtain probate of a will.

Every person in the chain of representation has the same rights in respect of the estate of the testator as the original executor would have had if living, and is to the extent to which the estate has come to his hands answerable as if he were an original executor.

An executor of an executor, if he has accepted the executorship of the latter, cannot renounce the executorship of the former executor. It is, however, necessary that the first executor should have proved his testator's will, for if he die before probate his executor is not executor to the first testator.

There is no representation where the will of the original testator is proved abroad, while the latter testator's will is proved in England.

GRANT OF PROBATE.

A document will not be admitted to probate unless it has by itself a testamentary character, and even then not necessarily the whole of it. The Court may admit part of an instrument to probate and refuse it as to the rest, but nothing may be inserted.

A will disposing only of property in a foreign country is not entitled to probate unless it confirms or is confirmed by the English will. Where there are separate and independent wills, one dealing solely with property in the United Kingdom and the other with property in some other country, probate will be granted of the will solely disposing of British property without incorporating the foreign will, but an authenticated copy of it must be filed in the Registry, and a note of such filing is added to the English probate.

Probate ought not to be granted of a will merely appointing testamentary guardians. A codicil not containing any disposition of property, but simply revoking all former wills, is of a testamentary character and entitled to probate.

A will disposing of personal estate in this country in pursuance of a power of appointment, and executed in compliance with the requisites of the power, is entitled to probate though not executed according to the testamentary law of the domicile of the party making it. If there be a will in addition to a testamentary appointment under a power, both documents must be included in one probate.

Formerly a will of land only, and not appointing executors, could not be admitted to probate, but in the case of persons dying after 1897 probates and letters of administration in respect of real estate only may be granted.

TIME FOR AND MODES OF PROBATE.

Firstly, no one can prove a will but he who is named executor therein. An executor may waive his rights, but he cannot transfer such rights or character of executor to a person not named as executor in the will.

An action will not lie against an executor for not proving; the only remedy is by citation.

Any person taking possession of or administering any part of the personal estate of a deceased person without obtaining probate of administration within six calendar months after his or her decease, or within two calendar months after the termination of any dispute respecting the will or right to letters of administration, if any, which shall not be ended within four calendar months from death, shall be punishable by fine and increase of duty.

No probate shall issue until after seven days, and no grant of administration until after fourteen days from death unless under direction of the Judge or by order of two Registrars.

Where a first application is made after three years from death, the reason for delay must be certified to the Registrar.

GENERAL PRINCIPLES RELATING TO GRANT.

In granting letters of administration the Court shall have regard to the rights of all persons interested in the real and personal estate of the deceased or the proceeds of sale thereof, and in particular administration with will annexed may be granted to a devisee or legatee, and in regard to land settled previously to death, and not by the will of deceased, administration may be granted to trustees of settlement, and any such administration may be limited in any way the Court thinks fit.

Where deceased died wholly intestate as to real and personal estate administration must, unless by reason of insolvency or other special circumstances the Court thinks it expedient to grant administration to some other person, be granted to one or more of the persons interested in the residuary estate, and in regard to land settled previously to death, to the trustees, if any, of the settlement, if willing to act.

An administrator has the same rights and liabilities, and is accountable in like measure, as if he were the executor of the deceased.

Grants of administration are either: (*a*) General or unlimited; (*b*) limited or special. In the one case the administrator has committed to him the whole estate, and the period of his authority lasts until he either dies or has wound up the estate. In the other case the estate is only partly committed to him, or else his authority, though extending over the whole estate, is limited in duration or scope.

A grant of administration will not be made merely in respect of property abroad. In case of foreigners the Court often follows foreign law, and will adopt and follow the grant of a foreign Court of competent jurisdiction if an actual grant has been made, unless the administrators appointed by that Court are by the law and practice of this country personally disqualified, *e.g.*, a grant would not be made to a minor.

Although the English Courts will in a proper case generally adopt a Scottish grant, the Courts in Scotland have no power to appoint persons to administer personal property in England, that power being exclusively vested in English Courts, and of this the Scottish Courts are bound to take notice.

Other things being equal, the Court has always preferred a sole to a joint administration. Where special circumstances render it convenient, it will by consent grant a joint administration. While the Court may grant a joint administration on request it never forces one. On the other hand, the Court refused, as contrary to practice, to make a subsequent grant to one alone of co-administrators, even though of the remaining two one was in foreign parts unknown and the other bankrupt. When persons choose to take on themselves that office they must put up with the inconvenience that may ensue. They cannot act separately.

It is now provided that probate or administration shall not be granted to more than four persons in regard to the same property, and administration shall, if there is a minority, or a life interest arises under the will or intestacy, be granted either to a trust corporation with or without an individual or to not less than two individuals.

If there is only one personal representative (not being a trust corporation), then during the minority of a beneficiary or subsistence of a life interest, and until the estate is fully administered, the Court may, on the application of any person interested, or of the guardian, committee or receiver of any such person, appoint one or more personal

representatives in addition to the original personal representative.

Several administrations may be granted of several parts of the intestate's estate. Representation may be granted in respect of real estate of a deceased, or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of trust estate only.

A grant of administration of real estate only may be limited in any way the Court thinks proper.

Where an estate is known to be insolvent, the grant of representation to the real and personal estate shall not be severed except as regards a trust estate.

Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next-of-kin or next friend will be required. In case of infants under seven years not having a testamentary guardian or a guardian appointed by the Court of Chancery, a guardian must be assigned.

No objection is taken to administration being granted to one who is abroad. In that case it may be granted to his attorney acting under a power of attorney, the grant being "to A for the use and benefit of B and until he shall apply for and obtain letters of administration of the said estate of the said intestate." A person to whom such a grant is made is to all intents and purposes administrator, and is liable to be sued in respect of the estate in the same way as if he had obtained a grant in his own right. He may sue, though insolvent, without giving security for costs.

Where a person dies after 1925 wholly intestate the priority of right to a grant of administration is as follows:

(*a*) Husband or wife.
(*b*) Children or other issue, *per stirpes*.
(*c*) Father or mother.
(*d*) Brothers and sisters of the whole blood or their issue, taking *per stirpes*.
(*e*) Brothers and sisters of the half blood or their issue, taking *per stirpes*.
(*f*) Grandparents.
(*g*) Uncles and aunts of the whole blood or their issue, taking *per stirpes*.
(*h*) Uncles and aunts of the half blood or their issue, &c.
(*i*) The Crown.
(*j*) Creditors.

On the death of a wife intestate, her husband has a paramount right to administration of her estate. The Court will pass him by if the marriage has been dissolved by reason of his adultery and desertion.

A divorced spouse, whether petitioner or respondent, ceases to have an interest in the estate of the other party of the dissolved marriage who subsequently dies intestate, and the Court will pass over the surviving spouse without citation. Administration of a wife's effects has been refused to the husband where a marriage was void. Where a wife has obtained a protection order, the husband is not entitled to administration of property she has acquired after desertion, and it is not necessary to cite the husband.

On the death of a man intestate the practice is to make the grant to the widow, but this is discretionary, and on sufficient cause shown the Court will exercise its discretionary power and grant administration to the next-of-kin. Thus, where the widow had lived separate from her husband—had misconducted herself—had by her marriage settlement barred herself of all interest in her husband's property—was of unsound mind. But a very strong case must be made out.

The Court may grant administration to the widow and one of the next-of-kin, though it is not the practice to do so unless all the other next-of-kin are adult, or at least not of tender years, and consent.

In case of death before 1926, there being no widow or widower, the following is the order: (1) Child or children; (2) grandchild or grandchildren; (3) great grandchildren; (4) father; (5) mother; (6) brothers or sisters; (7) grand, fathers and grandmothers; (8) nephews, nieces, uncles-aunts, great grandfathers or great grandmothers; (9) great nephews and great nieces, all being equally entitled who stand in same degree. Other things being equal, males are preferred to females. A son has been preferred to a married daughter, notwithstanding that he had constituted himself executor *de son tort*. Primogeniture gives no right.

Since 1897, if there is real estate, the Court has regard to the rights and interests of persons entitled, and the heir-at-law is entitled to the grant equally with the next of kin.

A husband may be passed over in favour of the guardian of a wife's infant heir. Where the title of the person applying as heir-at-law is clear and there is no personalty, a grant may be made to the heir-at-law without notice to the next of kin, but where the title is doubtful, or the personalty is large as compared with realty, notice should be given to the next of kin.

Administration is only granted to a creditor failing any other representative. A creditor cannot take a grant until all entitled, as well as next of kin, have been cited.

Every person (except the Public Trustee, Solicitors to the Treasury and the Duchy of Lancaster) to whom a grant of administration is given must give a bond to the Principal Probate Registrar with, except in one case, two sureties. The bond must be in a sum equal to double the gross value of the estate. A husband administering a wife's estate requires only one surety.

Probate is legal evidence of a will. Before instituting proceedings in respect of the rights or property of a testator or an intestate, the executor or personal representative must obtain a grant of probate or letters of administration to the deceased's estate.

The appointment of a person or persons as executor or executors, or as administrator in the case of an intestacy, vests in such person or persons all the real and personal estate of the testator or the deceased person.

The executor or administrator must pay—

(*a*) Funeral expenses and the expense of proving the will or obtaining the grant.
(*b*) Debts due to the King.
(*c*) Debts which are by particular statutes to be preferred to all others.
(*d*) Debts of record—judgments, statutes and recognizances.
(*e*) Specialty and simple contract debts.
(*f*) Debts on voluntary bonds.

In the administration of the English estate of a deceased domiciled abroad, foreign creditors are entitled to dividends *pari passu* with English creditors.

Costs of an administration suit properly instituted are considered as expenses in administering the estate, and are the next charge after personal expenses upon an estate, whether administered in or out of Court.

If the assets are insufficient to pay the costs of all parties, the executor's costs have priority.

Testamentary expenses or executorship expenses means expenses incident to the proper performance of the duty of an executor, and includes costs incurred by executors in obtaining the advice of Solicitors or Counsel as to the distribution of their testator's estate. Also the costs of the executors and other parties to an action, whether instituted by an executor or by a beneficiary for the administration of the testator's personal estate. Also the expenses incurred by the executors for the protection of specific legacies pending the distribution of the assets, and payments by the executors in discharge of debts falling due from the testator's estate after his death. Also estate duty in respect of personal property. Where a testator directed another's testamentary expenses be paid, it was held to extend to the expenses of administration under an intestacy. But it does not include estate duty payable in respect of real estate, even where the Land Transfer Act, 1897, applies, or the settlement of estate duty (when payable), or the plaintiff's costs of an unsuccessful action impeaching the validity of a will, though ordered by the Probate Division to be paid out of the testator's estate.

If a general power of appointment is executed, the appointed fund does not pass to the executor as such within the meaning of sect. 9 of the Finance Act, 1894. The estate duty payable is charged on the appointed fund and is not payable out of the residuary estate, and such duty is not included in the "testamentary expenses."

The legacy duty imposed by 36 Geo. III, c. 52, sect. 6, is a simple contract debt, and is only payable in priority to other debts of a like degree. Sect. 33 of the Bankruptcy Act, 1914, does not apply to insolvent estates of deceased persons administered out of Court so as to deprive Crown debts of the priority given to them by common law.

Debts having a statutory priority:—

(*a*) Debts owing by deceased overseers of the poor.

(*b*) Debts owing by officers of friendly societies and savings banks *virtute officii*.

(*c*) Regimental debts of an officer or soldier of the Army or Indian Army dying on service;

but not the claims of the guardians of the poor under 12 and 13 Vict., c. 103, sect. 16.

In all these cases the words of the statutes are large enough to give these debts an absolute priority, even over personal expenses and testamentary expenses and Crown debts, but *quære* was this the intention of the Legislature?

Between one registered judgment and another had against the testator, precedency or priority of time is not material, but he which first sueth execution must be preferred. Judgments against executors are payable out of the testator's assets, according to their respective dates. A judgment and a decree obtained on the same day were considered to have been obtained at the same moment.

The Administration of Estates Act, 1869, does not prevent a judgment creditor who has obtained judgment against an executor before the administration decree from having priority over the other creditors, though his judgment is not registered.

A debt by decree in equity, provided it be final and not merely a decree to account, is equal to a judgment, but a decree to account has not that force, even though there be superadded a direction for payment out of the result of the account; a mere order *nisi* to sign a judgment is not effectual to give priority, and a foreign judgment constitutes but a simple contract debt. Except so far as they are protected by statute, executors, at their peril, ought to take cognisance of debts upon record.

A recognizance (which is an obligation of record entered into before some Court of record or magistrate duly authorised with conditions to do some particular act, as to appear at Assize, to keep the peace, to pay a debt, and the like) must be enrolled to ensure its priority.

A sum of money due from a receiver, whether the amount has been ascertained or not, is a debt of record so long as the recognizance exists. Statutes are practically obsolete.

All specialty and simple contract debts and unregistered judgments against the deceased are now payable *pari passu*, except that a solicitor having a lien upon the deceased's estate is entitled to be paid before the rest of the specialty and simple contract debts. Voluntary bonds and promissory notes given without consideration may only be paid after all simple contract debts are discharged. An executor may not pay a debt barred by the Statute of Frauds, but he is not usually compellable to take advantage of the Statute of Limitations. The debtor's executor may, in his representative capacity, satisfy his testator's conscience. He may pay statute barred debts and will be allowed same as against divisions of real estate upon which other debts are in consequence thrown.

If an administration summons by a creditor has been defended by one executor and dismissed on the ground of the Statute of Limitations, the matter is *res judicata*, and the other executor may not pay the creditor, or, if he does, he is accountable to the estate for the amount so paid.

Where creditors have compounded for less than the amount of their debts under a misapprehension as to assets, it seems the executors may not, on the assets proving sufficient, pay them the whole amounts against the wish of the residuary legatees.

Where the estate of a deceased person is insolvent, real and personal estate is administered as follows:—

(*a*) Funeral, testamentary and administration expenses have priority.

(*b*) Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to valuation of annuities and future and contingent liabilities, respectively, and as to priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy.

The result is, except as to Crown debts and debts having statutory priority (including wages and other preferential payments mentioned in sect. 33 of the Bankruptcy Act, 1914), all pre-existing priorities are abolished. Judgment debts have no priority, even *inter se*. Voluntary debts are payable *pari passu* with others, and the widow, not being the legal personal representative exercising her right of retainer, is, in respect of certain debts, postponed to all other creditors.

EXECUTOR'S RIGHT OF PREFERENCE AND RETAINER.

The law imposes on the executor the burthen of paying the debts of the testator in a particular order. On the other hand, he has certain privileges.

One is that among creditors of equal degree, he may pay one in preference to another, and he may exercise the right in respect of all the assets of the deceased. Often actions commenced against him by a creditor, confess a judgment in favour of another creditor of equal degree, and thus give the latter a preference. Similarly it is laid down that an executor or administrator, after commencement of a creditor's action for administration, and before judgment, may voluntarily pay a creditor in full, though he may have had notice of action, and he will be allowed such payment in his accounts. Nor

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is it material that the executor has confessed judgment and that judgment, not being filed under the Debtors Act, 1869, sect. 27, is void. The payment of such a debt cannot be questioned by the plaintiff in any prior action. An executor may pay simple contract debts in full in priority to a specialty debt of which he has notice. To entitle him to prefer, it is not necessary for him, if the estate proves insolvent, to establish that when he made the payment he had assets in hand. He may advance the money and will be entitled to recoup himself out of subsequent assets. Right of preference ceases when judgment or order for administration has been pronounced. The right of an executor or administrator to prefer, and the right to retain his own debt, may be exercised in respect of all assets of deceased.

An executor can retain for a debt due to the firm of which he is a partner, or to joint creditors of which he is one, but the manager of a bank to whom administration has been granted may not retain for the bank's debt.

An executor does not lose his right of retainer in an administration action merely by delay, which can be explained if there are assets against which he can exercise his right.

One of two executors has the right to retain his own debt out of the balance due from both to the testator's estate.

One of two joint administrators or executors has no right of retainer against the other; if the estate is insufficient their debts must abate rateably.

The Land Transfer Act, 1897, has not conferred any right of retainer in favour of the personal representative as against real estate, though now "legal assets."

Purchase money of realty agreed to be sold by the testator is subject to the right of retainer, but not the proceeds of the sale of real estate sold by an executor.

ACCOUNTS.

It is the bounden duty of executors and administrators to keep accounts, and to be constantly ready with them and to give accurate information with regard to them. They are bound to deliver their accounts within a reasonable time and to vouch them after delivery. A legatee is not entitled to a copy of the accounts at the expense of the estate, and executors, if required to furnish accounts, can demand to be paid or guaranteed the costs of so doing.

Executors are not chargeable with the value of their testator's property as stated by him and others in deeds to which executors are not parties.

Where the estate is insolvent only reasonable joint expenses will be allowed, according to circumstances. Executors are usually entitled to be allowed the payment of statute-barred debts, but they will be charged with over-payment to a creditor, though it is done innocently.

Personal representatives will not be allowed payments to creditors after decree for administration, but they may stand in the place of creditors paid.

Executors will be charged with interest on balances which they ought to have, but have not, invested, but there must be a clear case of improper retention to a considerable or substantial amount.

Interest will not be charged on a balance retained by an executor under a fair misapprehension of his right to it. Interest on balances, where chargeable, will be 4 per cent. A special case beyond mere negligence is necessary for 5 per cent., *e.g.*, that the executor has employed the money in his trade.

Where executors did not prove a will for nearly seven years after testator's death, and were, consequently, unable to obtain payments of certain insurance moneys out of which they might have discharged a debt owing by testator, carrying interest at 5 per cent. per annum, the executors were held not to be liable for loss of interest, the only remedy of the beneficiaries being by citing them in the Probate Division.

Compound interest will be given against an accounting party when he has employed money in business, or ought to have accumulated it in the way of compound interest, and the burden is on him to show that he has not had any benefit in his trade from the increased balance at his bankers.

The Court will not charge an executor who has been guilty of mere delay in accounting, with interest on arrears of income unpaid by him, unless the delay was clearly improper.

In the absence of any contract for that purpose, no person can, by acting as trustee, derive any pecuniary benefit to himself. The general principle is that an executor who takes upon himself to act with regard to the testator's property in any other manner than the trust requires, puts himself in this situation, that if there be a loss he must replace it, and if there be a profit it belongs to the estate.

Executors are not entitled without express stipulation to an allowance for carrying on their testator's business, and even when there is express power they are not so entitled as against creditors. Nor are they entitled to commission as agents or auctioneers to his estate after his death. On the same principle, executors are not allowed commission on collection of rents, but have been allowed to charge for a salaried collector, though they themselves had small annuities for their trouble.

A man is not bound to be his own bailiff, and trustees have been allowed to charge for one where there was an estate to be managed which they did not manage personally.

An executor has been allowed the expense of an accountant where from the nature of the accounts he is justified in so doing.

Executors will be disallowed costs of an action which they improperly commenced, or which they improperly resisted, but will be allowed the costs of probate litigation properly incurred by them in support of the will, though unsuccessful. They have been allowed, on transferring stock to a legatee or into Court, a stockbroker's charge for identifying them at the bank. They have even been allowed expenses incurred under a misconception. But as against creditors, they cannot be allowed disbursements in the schooling, feeding or clothing of deceased's children subsequently to his decease.

If an executor borrows money or advances it out of his own pocket to pay the debts of his testator which carry interest, or satisfy some of the testator's creditors, he is entitled to be paid in full in priority to other creditors, and to interest on money advanced or borrowed, and may recoup himself out of subsequent assets which come to his hands, but he is in no better position than the creditors were as regards statute-barred debts. This claim may consequently be barred. Where an executor from time to time advanced his own moneys in excess of the assets in his hands, he was allowed simple interest at 4 per cent. on the balance due to him at the end of each year.

The Court, it was said, never allows an executor for his time and trouble, especially where there is an express legacy for his pains. Neither will it alter the case that he renounces and yet is assisting the executorship, nor even though it appears that he has deserved more and benefited the trust to the prejudice of his own affairs, but the rule is not so stringent but that it may be relaxed if peculiar circumstances be shown.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to, and promotions in, the Membership of the Society have been completed since our last issue :—

ASSOCIATES TO FELLOWS.

HOPKINS, JOHN, 43, Castle Street, Liverpool, Practising Accountant.

LACEY, HORACE ERNEST (F. Roberts & Co.), 15, Guildhall Road, Northampton, Practising Accountant.

SINGLETON, JOHN THOMAS (E. Harlow & Co.), Grosvenor Chambers, 23, King Street, Nottingham, Practising Accountant.

TOMLINSON, LESLIE ARTHUR, Eldon Chambers, Wheeler Gate, Nottingham, Practising Accountant.

ASSOCIATES.

BARTER, FRANK, Clerk to Arthur Daniels, Bank Chambers, 57, Palmerston Road, Southsea, Portsmouth.

BATES, MARTIN FREDERICK, Borough Treasurer's Office, Guildhall, Swansea.

BENNETT, ERIC KENNETH, Clerk to W. S. Hill Roberts, Temple Chambers, 65, Lichfield Street, Wolverhampton.

BENSON, HENRY EDWARD, Borough Treasurer's Department, Town Hall, Chelsea, London, S.W.3.

CAPPLEMAN, JAMES (Morgan, Cappleman & Co.), 66, King Edward Street, Hull, Practising Accountant.

CHARRINGTON, HARRY, Clerk to Alban & Lamb, Newhall Chambers, Newport, Mon.

DONALD, ARTHUR JAMES, formerly Clerk to Crane, Houghton & Crane, St. Paul's Churchyard, London, E.C.4.

FLETCHER, EDWIN, B.A., formerly Clerk to Kingscott, Dix & Co., 1, Barton Street, Gloucester.

HALE, ERIC JOHN, Clerk to William Morris & Sons, Lombard House, Little Britain, London, E.C.1.

HECQUET, WILLIAM THOMAS MORAN, formerly Clerk to Clarke-Lens & Clarke-Lens, 76, Newgate Street, London, E.C.1.

HODGE, WALTER ALFRED, Clerk to Hodge & Baxter, National Provincial Chambers, High Street, Kettering.

HODGES, REGINALD, Clerk to Peat, Marwick, Mitchell and Co., 54/56, Unter den Linden, Berlin, Germany.

HONEYBONE, RICHARD MILES, Clerk to Kingston, Smith and Co., Adelaide House, King William Street, London, E.C.4.

INGLEBY, LOUIS, 49, Deansgate, Manchester, Practising Accountant.

LEE, JOHN CHARLES EDWARD, Clerk to Mundy, Brewer and Johnson, Wood Street, Queen Square, Bath.

LOWNDS, ERIC JOHN WALTER, Treasurer's Department, Town Hall, Ealing, London, W.

LYONS, WILLIAM MARSTON, formerly Clerk to H. H. Bobart & Co., Gresham College, Basinghall Street, London, E.C.2.

REEDER, FRANK ALAN, Clerk to Bishop & Hayden, 32, Prince of Wales Road, Norwich.

SALMONS, ERIC FRANK LESLIE, Clerk to Lescher, Stephens and Co., 6, Clements Lane, Lombard Street, London, E.C.4.

SAVAGE, JOHN HENRY, Accountant's Department, Urban District Council, Colwyn Bay.

SNELL, ROWLAND WEDGEWOOD, Clerk to C. A. Jakeman, 12, Stert Street, Abingdon, Berks.

SQUIRES, NORMAN STANLEY TOWERS, Clerk to Stephenson, Smart & Co., 17, High Street, Stamford, Lincs.

WALKER, CECIL, Clerk to Geo. H. Walker, 37, Southgate, Halifax.

WARREN, FREDERICK, Clerk to Peat, Marwick, Mitchell and Co., 11A, Chapel Street, Camborne, Cornwall.

WELSH, ROBERT GOLLAN, Clerk to Douglas, Mackelvie and Co., Sun Building, St. George's and Longmarket Streets, Cape Town, South Africa.

WOOLHOUSE, KENNETH, Clerk to Henry Allott, 53, Queen Street, Sheffield.

District Societies of Incorporated Accountants.

LONDON.

On November 30th, Sir Ernest Benn, C.B.E., addressed the London and District Society at Incorporated Accountants' Hall on "Public Economy."

The chair was taken by the President of the District Society, Mr. Thomas Keens, D.L., F.S.A.A. A full report will appear in a later issue.

After the lecture, the President of the Society, Mr. Thomas Keens, and the Committee entertained to dinner at Incorporated Accountants' Hall, Sir Ernest Benn and a number of guests.

The Incorporated Accountants' London and District Society are holding their second reception and dance at Incorporated Accountants' Hall at 8.30 p.m. on Thursday, December 10th.

BRADFORD.

Annual Report.

The Committee have pleasure in submitting to the members the following report of the Society's proceedings for the year 1930-31 :—

The Committee appointed by the Conference of Representatives of District Societies last year completed the drafting of a set of Standard Rules, which were approved by the Council of the Parent Society and recommended for adoption by all District Societies. Your Committee has decided to take this step and the new rules will be submitted for approval at the General Meeting of the members.

The Hon. Secretary attended the Conference in London in May last as representative of this district. The chief items of interest were connected with the new rules referred to above. These conferences still continue to serve a most useful purpose as a means of personal contact between the Officers of the District organisations and the Parent Society.

MEMBERSHIP.

There has been a steady influx of members to the Students' Section following the operation of Bye-Law XXIV, which renders membership of such a section a condition precedent to the granting of permission to sit for the Society's examinations. The present membership is as follows :—

Fellows and Associates in practice ..	92
Fellows and Associates not in practice ..	101
	193
Members of Students' Section	116
Total	309

These figures show an increase of two Fellows and Associates and 22 Students.

During the year the profession has suffered a serious loss by the death of Mr. Feather Ogden Whiteley, F.S.A.A., O.B.E., City Treasurer of Bradford. Mr. Whiteley had a reputation throughout the country as an accountant and authority on municipal finance and was everywhere held in highest esteem. He was a member of the Council of the Parent Society and for many years a Vice-President of this District Society.

LUNCHEONS.

The monthly luncheons were again continued during the months from October to March, and were greatly appreciated. A hearty invitation is extended to all Incorporated Accountants to attend whenever possible. The following gentlemen spoke after lunch and the very best thanks of the Society are accorded to them for their services :—

1930.

November 11th.—Mr. J. G. Dodgson on "Social Credit."

December 17th.—Mr. A. H. McGregor Temple on "The Government Export Credits Scheme."

1931.

January 13th.—Mr. Frank Betts on "Education for Business."

February 10th.—Mr. Lascelles on "Machine Accounting."

March 10th.—Mr. Geo. R. Lawson on "Does Income Tax on Profits enter into Costs and Prices?"

The Committee also wish to record their thanks to Mr. H. Mitchell Firth for the work which he has done in arranging the luncheons and obtaining speakers.

LECTURES.

The Lecture Syllabus for 1930-31 proved to be a very attractive one, excellent attendances being recorded at most of the meetings. At the lecture delivered by Professor Jones over 100 were present, and at Mr. Grainger's meeting the attendance was 78, the average attendance at the other lectures being about 24. The Syllabus was as follows :—

"Bankruptcy Law," by Mr. W. H. Grainger, F.S.A.A. *Chairman:* Mr. Tom Hudson.

"The Present Trade Depression and the Trade Cycle Theory," by Professor J. H. Jones, M.A. *Chairman:* Mr. Tom Hudson.

"Notes on Income Tax and Sur Tax, including the Finance Act, 1930," by Mr. Victor Walton, C.A. *Chairman:* Mr. A. E. Stringer.

"Some Practical Points on Executorship," by Mr. C. A. Sales, LL.B., F.S.A.A. *Chairman:* Mr. R. H. B. Heap.

Joint Meeting with Yorkshire District Society at Hotel Metropole, Leeds. "Mock Income Tax Appeal."

"The Problem of Money and the Price Level," by Mr. W. Bell, M.A. *Chairman:* Mr. Tom Hudson.

"The Conduct of a Voluntary Liquidation," by Mr. Geo. R. Lawson, B.Com., F.S.A.A. *Chairman:* Mr. H. Mitchell Firth.

"Arbitrations and Awards," by Mr. O. K. Metcalfe, M.A., LL.M., Barrister-at-Law. *Chairman:* Mr. C. E. Claridge.

"Receivership," by Mr. E. Westby-Nunn, LL.B., Barrister-at-Law. *Chairman:* Mr. W. Hustwick.

"Costing," by Mr. E. Miles Taylor, F.C.A., F.S.A.A. *Chairman:* Mr. E. B. Rawlinson.

The Annual Meeting was held on November 13th, 1930, when there were 54 present. The members took tea together as the guests of Mr. Tom Hudson before the meeting, and after the formal business Mr. W. Grainger delivered a lecture on "Bankruptcy Law."

By the kind invitation of the Sheffield District Society, a party of students visited Sheffield on February 23rd, 1931. A debate took place on the proposal that "Rationalisation will improve the present state of trade."

A debate was also held jointly with the Bradford Law Students and Bradford Chartered Accountants' Students on December 9th, 1930, on the motion "That the cinema does more harm than good."

Our members were also invited to lectures by the Institute of Bankers and the local Chartered Accountants' Students' Association.

EXAMINATIONS.

The hearty congratulations of the members are accorded to the students who succeeded in passing the examinations of the Parent Society.

LIBRARY.

Members are again reminded that the Library is the least active department of the Society's work, and are urged to make use of it and to put forward suggestions for additions. The Committee's thanks are tendered to the donors of various volumes during the year.

Retirement of Honorary Secretary.

On November 4th Mr. Herbert Reynolds resigned the office of Honorary Secretary, owing to pressure of professional engagements. Mr. Reynolds has held this office for the long period of nineteen years, and has given most valuable service to the District Society.

His successor is Mr. Thomas Rhodes, of 31, Manor Road, Bradford.

Syllabus of Lectures, 1931-32.

1931.

Oct. 20th. "Notes on recent Income Tax Cases and the Finance (No. 2) Bill, 1931," by Mr. Victor Walton, C.A. *Chairman:* Mr. Tom Hudson, F.S.A.A.

Oct. 30th. "The Abandonment of the Gold Standard," by Mr. George Lawson, B.Com., F.S.A.A. *Chairman:* Mr. Clement E. Thomas, A.S.A.A.

Nov. 17th. "Dealing with a Bankrupt's Assets," by Mr. E. Westby-Nunn, LL.B. *Chairman:* Mr. J. W. Reynolds, F.S.A.A.

Dec. 3rd. Lecture on "Some Aspects of the Present Financial Crisis," by Professor J. H. Jones, M.A. *Chairman:* Mr. Albert E. Stringer, F.S.A.A. (To be held in the Reception Room, Midland Hotel, at 7.30 p.m.)

Dec. 15th. "Social Credit," by Mr. J. G. Dodgson. *Chairman:* Mr. E. B. Rawlinson, C.A., F.S.A.A. (At 7 p.m.)

1932.

Jan. 7th. "Income Tax Cases." Joint Meeting with Yorkshire District Society. *Chairman:* Mr. Herbert Reynolds, F.S.A.A.

Jan. 26th. "The Whole Duty of a Director," by Mr. Albert Crew, Barrister-at-Law. *Chairman:* Mr. A. B. Myers, F.S.A.A.

Feb. 9th. "Executorship," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A. *Chairman:* Mr. H. A. Horsfield, F.S.A.A.

Feb. 23rd. Joint Meeting with Sheffield District Society. *Chairman:* Mr. Wade Hustwick, F.S.A.A.

Mar. 3rd. "Income Tax," by Mr. Victor Walton, C.A. *Chairman:* Mr. H. Mitchell Firth, A.S.A.A.

Mar. 15th. "Investigations," by Mr. A. B. Thoseby, C.A. *Chairman:* Mr. Joseph Rhodes, F.S.A.A.

Lectures will be held at the Liberal Club, Bank Street, Bradford (except where indicated otherwise), at 7.30 p.m.

EAST ANGLIA.

Syllabus of Lectures, 1931-32.

1931.

Nov. 18th. "New Taxation of Land Values," by Mr. F. Southall, Barrister-at-Law.

Dec. 2nd. "Trusteeships," by Mr. F. T. Alpe, Barrister-at-Law.

Dec. 16th. "Duties and Liabilities of Auditors," by Mr. W. H. Grainger, F.S.A.A.

1932.

Jan. 13th. "Conversion of a Business into a Private Company," by Mr. H. W. Jordan.

Jan. 27th. "Income Tax—Some Knotty Points," by Mr. T. G. McKenna, H.M. Inspector of Taxes.

Feb. 10th. "Banking," by Mr. A. A. Emmett, Barclays Bank Limited.

Feb. 24th. Ten Minute Papers by Members.

Mar. 9th. "Negotiable Instruments," by Mr. C. A. Sales, LL.B., F.S.A.A.

Mar. 23rd. "Notes on Auditing," by Mr. W. P. Gill, A.S.A.A.

Lectures will be held at the Royal Hotel, Norwich, at 7.15 p.m.

HULL.

(STUDENTS' SECTION)

Syllabus of Lectures, 1931-32.

1931.

Oct. 2nd. "Partnership Law," by Mr. O. Griffiths, B.A., LL.B.

Oct. 16th. "Estate Duty in relation to Limited Companies," by Mr. S. A. Spofforth, A.S.A.A.

Oct. 30th. "Rights and Duties of Auditors," by Mr. W. H. Grainger, F.S.A.A.

Nov. 13th. "Bankers' Crisis of 1931," by Mr. F. J. Lewcock, A.C.I.S., Cert.A.I.B.

Nov. 27th. "Executorship Law," by Mr. E. Westby-Nunn, B.A., LL.B.

Dec. 11th. Mock Creditors' Meeting. *Chairman:* Mr. A. E. Thompson, A.S.A.A.

1932.

Jan. 15th. "November, 1931, Examination Papers," by Mr. E. Miles Taylor, F.C.A., F.S.A.A.

Jan. 29th. "Practical Points in Connection with Income Tax," by Mr. S. A. Spofforth, A.S.A.A.

Feb. 12th. "Company Law," by Mr. W. H. Grainger, F.S.A.A.

Feb. 26th. "The Industrial Depression," by Prof. G. C. Allen, M.Com., Ph.D.

Mar. 11th. "Modern Accounting Problems," by Mr. R. P. Anderson, A.C.A.

Mar. 24th. "Arbitration and Awards," by Mr. A. M. Hurwitz, LL.B.

All meetings will be held at Powolny's Restaurant, King Edward Street, Hull, at 7.15 p.m.

LIVERPOOL.

The Mayor of Southport (Councillor W. H. Bellis, LL.B.) presided, on November 12th, at a meeting of the District Society held at Southport. Mr. E. Westby-Nunn, B.A., LL.B., Barrister-at-Law, gave an interesting address on "Liquidators, Trustees and Receivers." This was the first lecture to be held by the Society outside Liverpool since its formation forty-four years ago.

MANCHESTER.

Syllabus of Lectures, 1931-32.

1931.

Nov. 13th. "The Financial Crisis and After," by Mr. J. Broatch, B.A., Editor of the *Manchester Guardian Commercial.*

Dec. 11th. "The Difference between Municipal and Company Management," by Mr. Arthur Collins, F.S.A.A., F.S.S.

1932.

Jan. 13th. "Building Societies," by Mr. F. E. Lumb, A.C.I.S., Chief Accountant, Halifax Building Society. Joint Meeting with Manchester and District Branch of the Chartered Institute of Secretaries, in the Chartered Accountants' Hall, Spring Gardens. (6.30 p.m.)

Feb. 12th. "Partnership," by Mr. H. R. Green, M.A., Barrister-at-Law.

Mar. 4th. "The Effects of Taxation on Industry," by Mr. Godfrey Craven, F.S.A.A.

April — Annual Meeting.

Meetings will be held in the Sale Room of the Manchester Estate Exchange, 46, Fountain Street, Manchester, at 6 p.m.

NEWCASTLE-UPON-TYNE.

ANNUAL MEETING.

The annual general meeting was held on November 13th at Newcastle-upon-Tyne. The President, Mr. William Metcalf McKenzie, who occupied the chair, said he did not wish to be re-elected, and moved that Mr. W. H. Stalker, the senior Vice-President, be appointed his successor. This was carried with acclamation, and Mr. McKenzie was thanked for his services.

The report as summarised below and the accounts for the year ended June 30th, 1931, were approved and adopted.

Mr. M. H. Groves and Mr. W. Hughes were re-elected to the Committee, and Mr. J. E. Spoors and Mr. C. Percy Barrowcliff were elected in the places of Mr. J. W. Armstrong and Mr. Edward Darnell. The new rules were then adopted, and it was agreed that the new name of the Society should be "Incorporated Accountants' Newcastle-upon-Tyne and District Society." Mr. T. H. Major, F.S.A.A., was re-appointed Honorary Auditor,

and the Honorary Secretary, Mr. J. Telfer, A.S.A.A., was accorded a vote of thanks for his services.

After the meeting, Mr. Percy C. Barrowcliff gave a short paper upon "Limited Companies and the Accountant."

Report.

The Committee have pleasure in presenting the annual report and accounts for the year ended June 30th, 1931. They desire to place on record a very cordial expression of thanks to those gentlemen who have so kindly delivered lectures to the District Society during the year.

MEMBERSHIP.

The membership at June 30th, 1931, was as follows :—

	Fellows.	Associates.	Total.
In practice ..	34	34	68
Not in practice ..	2	117	119
	36	151	187
Students ..	—	—	154
Total			341

The total at June 30th, 1930, was 324.

MEETINGS.

The following meetings and lectures were held during the year :—

Annual General Meeting, and "Points arising under the new Companies Act," by Mr. E. Westby-Nunn, B.A., LL.B.

Dinner at the County Hotel, Newcastle.

"Apportionment in Trust and Executorship Accounts," by Mr. Wilfred H. Grainger, F.S.A.A.

"Rationalisation," by Mr. E. Allen, M.A.

Open Meeting to discuss Accountancy Matters.

"Company Promotion and Formation (with special reference to the Companies Act, 1929)," by Mr. O. K. Metcalfe.

EXAMINATIONS.

Ten students were successful in the Final examination of the Parent Society, and seventeen in the Intermediate.

Official functions of the Manchester, Yorkshire and Bradford District Societies were attended during the year by the President and the Hon. Secretary; and the Hon. Secretary attended the Conference of the Society at Sheffield.

NEW RULES.

Under the new District Society Scheme the Parent Society, after discussion with the Conference of District Society Representatives, has drafted a set of Rules applicable to all District Societies.

The Council of the Parent Society has already approved the rules, and our own District Society will consider their adoption at the forthcoming Annual Meeting.

The following members of the Committee retire, but are eligible for re-election: Mr. J. W. Armstrong, Mr. M. Groves, and Mr. Wm. Hughes.

Under the new rules all District Societies will, in future, have a financial year ending March 31st. The next financial year of this Society will therefore terminate on March 31st, 1932.

WEST OF ENGLAND.

Syllabus of Lectures, 1931-32.

(Held at the Royal Hotel, Bristol, at 6 p.m.)

1931.

Nov. 9th. "Banking and Foreign Exchange," by Mr. C. R. Curtis, B.Sc. (Econ.). *Chairman:* Mr. S. Foster, F.S.A.A.

Nov. 23rd. "Negotiability," by Mr. E. W. W. Veale, LL.D. (Lond.). *Chairman:* Mr. C. B. Steed, F.S.A.A.

Dec. 7th. "Company Law, with Special Reference to Accountants," by Mr. C. A. Sales, LL.B., F.S.A.A. *Chairman:* Mr. J. G. Barron Curtis, F.S.A.A.

1932.

Jan. 4th. "Stock Exchange Transactions," by Mr. W. H. Grainger, F.S.A.A. *Chairman:* Mr. F. P. Leach, F.S.A.A.

Jan. 18th. "Partnership Law and Accounts," by Mr. C. A. Sales, LL.B., F.S.A.A. *Chairman:* Mr. H. O. Johnson, F.S.A.A.

Feb. 1st. "Equity and its Importance in Accountancy Practice," by Mr. E. Westby-Nunn, B.A., LL.B. *Chairman:* Mr. H. M. B. Ker, F.S.A.A.

(Held at the Guildhall, Gloucester, at 5.45 p.m.)

1931.

Nov. 24th. "Banking and Foreign Exchange," by Mr. C. R. Curtis, B.Sc. (Econ.). *Chairman:* Mr. J. S. Dudbridge, J.P., F.S.A.A.

Dec. 15th. "Executorship Law and Accounts," by Mr. W. H. Grainger, F.S.A.A. *Chairman:* Mr. D. G. Price, F.S.A.A.

1932.

Feb. 2nd. "Equity and its Importance in Accountancy Practice," by Mr. E. Westby-Nunn, B.A., LL.B. *Chairman:* Mr. S. Dudbridge, F.S.A.A.

(Held at the Mikada Café, Old Town Street, Plymouth, at 6.30 p.m.)

1931.

Oct. 23rd. "Equitable Apportionments and the Law of Intestate Succession," by Mr. E. Westby-Nunn, B.A., LL.B. *Chairman:* Mr. O. D. Pascho, A.S.A.A.

Nov. 20th. "The Accounts of Holding Companies," by Mr. J. Lancaster, F.C.A. *Chairman:* Mr. E. C. Condy, F.S.A.A.

Dec. 18th. "Bankruptcy" and "Liquidation," by Mr. E. Westby-Nunn, B.A., LL.B. *Chairman:* Mr. W. J. Ching, F.S.A.A.

1932.

Jan. 22nd. "Partnership Law and Accounts," by Mr. W. W. Bigg, F.C.A., A.S.A.A. *Chairman:* Mr. S. H. Roberts, F.S.A.A.

Feb. 26th. "Executorship Law and Accounts," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A. *Chairman:* Mr. P. White, F.S.A.A.

April 8th. "Company Law," by Mr. C. A. Sales, LL.B., F.S.A.A. *Chairman:* Mr. A. W. Lyddon, A.S.A.A.

(Held at Stafford House, Billetfield, Taunton, at 6 p.m.)

1931.

Nov. 18th. "Banking and Foreign Exchange," by Mr. C. R. Curtis, B.Sc. (Econ.).

Dec. 18th. "Executorship Law and Accounts," by Mr. W. H. Grainger, F.S.A.A.

1932.

Jan. 15th. "Negotiability," by Mr. E. W. W. Veale, LL.D. (Lond.). *Chairman:* Mr. A. C. Mole, J.P., F.S.A.A.

MISFEASANCE SUMMONS AGAINST DIRECTORS AND AUDITOR.

In the Chancery Division last month, before Mr. Justice Bennett, a misfeasance summons taken out by Mr. Sydney Edwin Smith, the liquidator of the Westminster Road Construction and Engineering Company, Limited, was heard.

The respondents to the summons were Mr. George Offer, Mr. Arthur Leslie Stevens, Mr. Harold Frank Hunt, and Mr. Beaumont Wakefield Shaw, who were directors of the company; Mr. Sidney Milson Macquire, manager and secretary to the company; and Mr. Sidney Cronk, Chartered Accountant, carrying on business as Sidney Cronk & Co., auditor to the company.

Mr. Spens, K.C., and Mr. Voss appeared for the liquidator; Mr. Gover, K.C., and Mr. Vanneck for Mr. Cronk; Mr. Lionel Cohen, K.C., and Mr. Braund for Mr. Offer and Mr. Hunt; Mr. T. F. Davis for Mr. Macquire, and Mr. Reid for Mr. Shaw.

Mr. Spens stated that the liquidator's claim was for repayments by all the respondents of £1,246 17s. 8d., part of a dividend declared in respect of the period ended March 31st, 1928, his case being that there were no profits out of which the dividend could properly be paid; also as against all the respondents for repayment of £345 16s. 10d., paid to Mr. Stevens as a commission on profits under his agreement with the company, for the same period; as against all the respondents except Mr. Cronk for repayment of a further sum of £200 paid to Mr. Stevens for the period commencing April 1st, 1928, and finally as against Mr. Hunt, Mr. Shaw and Mr. Stevens a declaration that £621 4s. 6d., the balance of the dividend declared and purported to be left with the company as a loan at interest was not due and payable.

Mr. Spens said that his complaint was over-valuation in the balance sheet of work in progress (the inclusion of sums for work not done until after the date of the balance sheet), that no allowance was made for reinstatement charges payable by the company to sub-contractors, and no provision was made for bad debts.

Mr. Justice Bennett: The company worked solely for the Post Office and local authorities, and was not likely to have bad debts.

Mr. Spens said there was an item in July, 1927, which the Post Office disputed and did not pay, and no inquiry whatever was made by the auditor about it.

Mr. Justice Bennett: With regard to the over-valuation of work in progress, what do you say the duty of Mr. Cronk was? We must have his standard of duty and see if he fell below it.

Mr. Spens: There is a duty imposed by law upon Mr. Cronk to check the figures.

Mr. Justice Bennett: The figures are prepared and certified by an officer of the company. What is the duty of the auditor? What more has he to do?

Mr. Spens: He must take steps to check the figures in the certificate of the work in progress.

Mr. Justice Bennett: What steps?

Mr. Spens: He cannot accept the certificate. He must ask how the figures are arrived at. It is his duty to check the accuracy of each figure.

Mr. Justice Bennett: Neither the books nor the invoices would enable the auditor to ascertain the value of the work done when the balance sheet was being prepared. Is it the practice in engineering companies, when auditing balance sheets, to call for the daily sheets which would show the work done daily?

Mr. Spens: I say it was part of his duty to call for the documents which showed how much of the job was done before and done after the date of the balance sheet. That is the figure that had to be checked, and I submit that it was the duty of the accountant to check it. He is not allowed to rely on the certificate of the manager of the company.

With regard to reinstatement liabilities, Mr. Spens said that it was the duty of the auditor to see that they were fairly represented in the balance sheet, and that, if he had checked the actual figures in the books instead of confining himself to the figures, he must have known that there was money due from the company, and allowed some figure in respect of them.

Mr. Justice Bennett: You say that in this respect there is no general standard of duty, but a particular standard arising from what was seen by him in the invoices he checked. You are seeking to throw an extraordinarily heavy and onerous duty upon auditors—to go outside the documents to see if the figures are correct.

Mr. Spens said his case was that, instead of there being a profit in the year ended March 31st, 1928, there had been a loss. When the company went into liquidation there was a deficit to creditors of about £7,000.

Mr. Smith (of Messrs. Hoale, Smith & Field), the liquidator, said he was an Incorporated Accountant. He doubted the accuracy of the company's accounts because of the high profit of over £3,000 in relation to the paid-up capital of £800 and he directed an investigation into them.

Mr. Justice Bennett: It looked too good to be true?

Mr. Smith: Yes.

Continuing, Mr. Smith said that the actual paid-up cash capital of the company on March 8th, 1928, was £820 2s. This was subsequently increased to £3,800 4s. He had no difficulty in checking the reinstatement liabilities. The figure of £1,543 13s. 7d., which appeared in the balance sheet was incorrect, as a large number of accounts in respect of work done by local authorities for the company prior to the end of March had been omitted. The total amount omitted was £1,403 19s. 11d. He got on to the track of these invoices from the entries in the company's books, and when he was unable to find an invoice on the files he wrote to the public authorities to certify the amounts.

Mr. Spens: Why do you say that these omitted items should have appeared in the accounts?—Because they were actual liabilities at March 31st, 1928, and owing to their omission the liabilities of the company were under-stated and the trading profits were over-stated.

By reason of that omission, do you say that Messrs. Sidney Cronk & Co. were negligent in not discovering these liabilities?

Mr. Justice Bennett: Is that a question for the witness? Have not I to decide that?

Mr. Spens: I thought that the witness might be able to assist the Court, but I will ask him the facts. Were the books of this company in a satisfactory state?

Mr. Smith: In a very unsatisfactory state.

Have you found a number of insertions in the books by the auditors? Did the books show all the liabilities provided for in the balance sheet?—Not until the auditors made the books agree with the balance sheet. Excluding the reinstatement liabilities referred to, the auditors included liabilities amounting to £600 left out by the company's officers.

If, as an auditor, you found an omission of liabilities from the company's books, would that make you suspicious of the books generally?—It would.

Would that put you on special inquiry as an auditor?—It would put me on inquiry, and there were other factors. From the materials which passed through the auditors' hands and were initialed by them, they must have been aware that there would probably be outstanding liabilities in respect of reinstatement work on March 31st, which would not be invoiced to the company until after that date. In a number of cases they made provision for other liabilities.

Mr. Justice Bennett: Do you say that the auditors should have examined all the invoices that came in down to the time that they certified the balance sheet?—It is not the general practice among auditors, but in the circumstances of this particular case it should have been done. If the invoices had been examined the auditors could not have failed to discover the existence of the liabilities which were not included in the balance sheet.

Mr. Justice Bennett: What were the circumstances which you say made it incumbent upon Mr. Cronk to examine the invoices down to the time that the balance sheet was certified?—The incomplete state of the company's books, the nature of the invoices which had actually passed through his firm's hands and the general circumstances. In the majority of trades it is customary to render the invoice for work done a month later, and this should be taken into account.

With regard to the value of work in progress, Mr. Smith said that in some cases credit was taken in the profit and loss account for the original invoice price of G.P.O. contracts, although the price had been reduced by the G.P.O., and that in other cases the company took credit for work which was not done until after March 31st.

Counsel for the various respondents said that they challenged these allegations and insisted upon their being proved by persons who were in a position to know the facts.

Mr. Justice Bennett said that would have to be done.

Mr. Smith said that the documents with which he checked the figures came from the company's files. He also complained that no provision was made in the accounts for any possible bad debts, although there was an item of £141 18s. outstanding from July, 1927, which the G.P.O. had repudiated.

Mr. Smith was then cross-examined by Mr. Gover, K.C., on behalf of Mr. Cronk.

Mr. Smith said that when he was appointed liquidator in November, 1929, he caused the whole of the accounts to be investigated, giving special instructions with regard to work in progress and reinstatement charges. At the conclusion of the investigation he formed the opinion that the auditor, Mr. Cronk, had been guilty of breaches of professional duty in respect of all the matters charged against him in the summons. As an expert accountant and auditor that was the opinion he honestly held when the summons was issued, and still held. He agreed that Mr. Cronk was not at first made a party to the summons, but said there was always an intention to make him a respondent.

Mr. Gover: Did you think it part of your duty as liquidator and an expert auditor, before taking any proceedings, to make inquiries of the parties charged with breach of duty?—No, I based my report to the Committee of Inspection on my inspection of the books and the investigations I had ordered.

You gave Mr. Cronk no invitation to make an explanation at any time?—No direct invitation, no.

Or the other respondents?—The only step I took was to have Mr. Macquire and Mr. Offer examined before the Registrar at private sittings. Apart from that I made no inquiry of anybody except that I did ask Mr. Macquire to come to the office and assist me with the matter, and he did so.

And, eleven months afterwards, you bring this summons alleging misfeasance, negligence and breach of duty?—Yes.

Do you honestly think you were justified in doing that without asking for any explanation?—I certainly do, because I was relying on the facts.

Replying to further questions, Mr. Smith said that, in the circumstances of this case, he could not conceive it possible that there was a reason for omitting from the balance sheet a liability.

Supposing a hypothetical case, that there was a sub-contract, and it was not disclosed to the auditor and was not entered in any book the auditor saw. Do you think that fact might have afforded a reasonable explanation for the auditor not inserting that item?—It depends on the circumstances. My charge here is a cumulative negligence from the very commencement.

Mr. Gover: It is not a vague charge of cumulative negligence. It is a charge of particular negligence in respect of particular sums. I am putting it to you that supposing there was a sub-contract and the explanation was that it had been concealed from or omitted to be shown to the auditor, would that be a reasonable explanation why the item was not inserted?—No, it would not in these circumstances.

That is your view of the conclusions you were justified in coming to when you issued your summons?—Yes.

And you say that you took a "most generous view" of the matter?—Yes, I undoubtedly did.

You say your honest conclusion is that the auditor was guilty of professional breach of duty because he failed to insert as a liability in the balance sheet his own charges for work with regard to which he was not instructed until after the date of the balance sheet, and none of which he did until after the date of the balance sheet. On that particular matter, do you still say you honestly are of opinion that the auditor committed a breach of his professional duty?—I put it no higher than that the majority of auditors put it in.

What about the minority? Are they all dishonest men who do not do it?—I have not and do not make any suggestion of dishonesty. On that particular item alone I do not suggest it was a breach of the auditor's professional duty.

With regard to the alleged failure to make provision in the balance sheet for bad or doubtful debts, Mr. Smith said that the G.P.O. paid its accounts so promptly that inquiry should have been made with respect to a debt of July, 1927, which it had repudiated and for which no allowance was made in the balance sheet.

Questioned with respect to some items he had particularised in his summons, Mr. Smith said that, if they stood alone they might not justify a charge of negligence. With regard to the reinstatement charges alleged to have been negligently omitted from the balance sheet, Mr. Smith said that, being aware of the general terms of the G.P.O. contracts which required reinstatement, and having seen the invoices which had passed through the office, it must have been obvious to the auditor that there were reinstatement charges to come in.

Mr. Smith was then cross-examined in great detail with regard to the items of work in progress, which he maintained were over-valued in the balance sheet.

Mr. Gover: Have you got the slightest doubt of the perfect honesty of Mr. Cronk and his firm?

Mr. Smith: Not the slightest doubt whatever.

Cross-examined by Mr. Lionel Cohen, K.C., Mr. Smith agreed that, in addition to the paid-up cash capital of £820 2s. on March 8th, 1928, the company had a loan capital amounting to upwards of £1,000 advanced by Mr. Hunt, and an overdraft at the bank. He was unable to say whether the overdraft was guaranteed or not.

Mr. H. S. King, F.C.A., of the firm of Sir Maurice Jenks, Percival & Co., Chartered Accountants, giving evidence for the liquidator, said he had 25 years' experience of audits. So far as he knew he had seen all the books, correspondence and documents in the liquidator's possession. He knew that part of the liquidator's claim in this case was that certain work in progress had been over-valued. He had never known a case in which the auditor did not check the work in progress.

Mr. Spens: What steps would he take?

Mr. King: In most cases there is a costing system which would enable the auditor to check the figures before him.

Have you examined the costing system of this company?—I have examined the costing book, which one cannot describe as a "system." As a "system" it was absolutely valueless—non-existent.

If the system is valueless, what other steps should the auditor take?—It must necessarily depend on the circumstances. The main point is whether he has anything that puts him on inquiry. If there is no costing system and no means of verifying the figures, he is entitled to rely on the figures given him by the company's officers, but I can hardly imagine any occasion except in the case of a company abroad where the figures cannot be verified. There was in this case material by which the auditor could have checked the figures.

What material?—Mainly the diary sheets and copy invoices rendered to the G.P.O. which were in the company's possession when the balance sheet was certified.

Had they been used to check the figures do you consider that the figures which appeared in the balance sheet would have been inserted?—I do not think so.

After your investigation of the books and documents in the possession of the company, did you come to the conclusion that the figures for work in progress in the balance sheet were excessive?—Yes, I did.

Do you think there were matters in this particular case to put the auditor on inquiry as to the accuracy of the figures?—I do.

Witness added that he had tried to put himself in the position the auditor was in at the time. The first thing that would have put him on inquiry was a letter written by the company to Messrs. Cronk & Co. in May, 1928, and then there was the profit and loss account showing a high profit on the comparatively small amount of capital (including the loan) employed during the period.

Mr. Justice Bennett (to Mr. Spens): You will have to prove the value of the work actually done at the date of the balance sheet, and that it was below the sums for which credit has been taken.

Mr, King said he had also inquired into the position with regard to the reinstatement charges, and that, in his opinion, the figure appearing in the profit and loss account as the company's liability under this head was inaccurate. The liability was understated, with the result that the profits were overstated. He was of opinion that the auditor certifying the balance sheet should have discovered this.

Questioned with regard to the debt disputed by the G.P.O., witness saidthat had regard to the form of the account in the ledger; the auditor had thrown upon him the duty of examining every item in it.

Mr. Justice Bennett: What was there peculiar in the form of the account?—It is a running account relating to a large number of contracts, and each contract should be considered on a separate footing. Having ascertained that the G.P.O. liability had remained outstanding for ten months, the auditor ought certainly to have made inquiry about it.

Mr. Spens: If an auditor is going to certify that a certain sum of money is due to the company, is there a duty upon him to satisfy himself that it is a good debt?—Yes.

Mr. Justice Bennett: I do not think this is a matter for the witness.

Mr. Spens: Was there any provision in these accounts for bad debts at all?—No.

Was that a factor which should make the auditor more careful to check the debts?—I am not sure that would be so in this case.

Mr. Lionel Cohen: Meaning that you would not expect bad debts when you are dealing with the G.P.O.

Mr. Gover: Do you say there is a general principle of auditing that, when there is a running account which relates to or includes a number of separate contracts, it is a duty incumbent on the auditor to examine every single item in the account?—No, it is not general.

Mr. Gover: Then I cannot understand your criticism.

Asked in further cross-examination how it was possible for an auditor to know that he must deduct for some liability to a sub-contractor if he had no knowledge of the sub-contract at all, witness replied that if the auditor had no knowledge of it he should inquire.

Mr. Gover: Why should he suppose that a construction company in one or two rare cases employed a sub-contractor?—I can quite conceive that I might put the question in certain cases.

Mr. Gover: It is easy to be wise after the event. With regard to work in progress, if the auditor is given a statement of values by the proper and presumably competent official of the company and has seen such entries in the books and documents as he honestly and reasonably thinks verify the statement, is there anything further he can do?—Only to accept the certificate if there is nothing to put you on inquiry.

Supposing you were put on inquiry and you had reasonable ground for believing that there was no other document, would you hesitate to accept the information?—All he can then do is to accept the certificate.

Evidence was then called as to the dates when the Westminster Company started and finished various G.P.O. contracts with a view to establishing the liquidator's allegation that credit was taken in the balance sheet for the value of work in progress which was not completed until after March 31st, 1928.

In order to avoid the time and expense involved in the calling of numerous supervisors from the G.P.O. and representatives of public authorities, the parties agreed to accept the documents as evidence of the work in progress, and the liquidator was re-called and cross-examined in great detail as to the estimates he had made of the work done before and after March 31st, 1928.

This closed the evidence for the liquidator.

The Defence.

Mr. Lionel Cohen, K.C., opening the defence for Mr. Offer and Mr. Hunt, said that the charges of misfeasance against them were that they had been parties

to the declaration of the dividend and the payments to Mr. Stevens. With regard to the second payment to Mr. Stevens (£200), his case was that it was done to get rid of him and was a very good bargain. Mr. Stevens was entitled to a salary of £400 a year and a commission of 10 per cent. on the net profits before anything was carried to reserve, and his agreement had three years to run. The position was that, on the balance sheet he was entitled to £345, and in those circumstances it was desired to get rid of him, and he was induced to put an end to the agreement on the payment to him of £200. With respect to the payment of the dividend, that was done on the faith of the balance sheet certified as accurate by the company's auditors, who were experienced Chartered Accountants in whom the directors had every confidence. If the profits were high as compared with the capital employed, so also was the turnover.

Mr. Justice Bennett: *Prima facie* the responsibility for the balance sheet is on the directors. The documents are theirs, and in the first instance they must take the responsibility.

Mr. Cohen: Their responsibility, I submit, is no higher than this—they must employ proper people to keep the books and prepare the balance sheet. They are entitled to rely upon the auditors to see that the effect of the books is properly set out in the balance sheet.

Mr. Justice Bennett: It must depend upon the facts in each case. Is not the test whether the directors, in handling other people's money, acted reasonably?

Mr. Cohen cited cases in which it had been held that the duty of a director was to act honestly and to exercise the same degree of skill and care as an ordinary man might be expected to take on his own behalf.

Mr. Justice Bennett: That cannot be the true test. A great many people do not care twopence about their own affairs. They have a great many more interesting things to do and employ other people to look after their affairs.

Mr. Cohen: The Judges were speaking of business affairs.

Mr. Justice Bennett: Do you challenge the allegation that there were no profits?

Mr. Cohen said he would like to reserve his decision on the figures until he had heard the evidence of Mr. Macquire. His clients relied on the certificate of Mr. Macquire and the certificate of the auditors.

Counsel added that he thought Mr. Smith had given his evidence very fairly.

Mr. Justice Bennett: It is the duty of directors to know something about the business of the company.

Mr. Harold Frank Hunt, giving evidence, said that until he became chairman of the Westminster Road Construction and Engineering Company, his only experience of company matters had been that he was at one time a director of a company that built houses in Australia and of a gramophone company. He became associated with the Westminster Company through Mr. Macquire, in whose integrity and ability in this type of work he had every confidence.

Mr. Hunt described how the various duties of the office were distributed, and said he had complete reliance upon those appointed to carry them out. Except when he was abroad for two months, he attended every board meeting and made inquiries as to how things were going on. He understood that matters were going on satisfactorily, and it was reported at each board meeting that this was so.

Continuing his evidence, Mr. Hunt said that at the time the balance sheet was being prepared he believed that all liabilities had been allowed for and that the company had made a profit of £3,000. He asked Mr. Macquire how the figures for the work in progress were made out and how they could be verified, and he replied that they were checked by the diaries kept by the G.P.O. supervisors and the company's men on the job, and that by this means the actual work done could be checked down to the last day. So far as he knew the accounts were being prepared by Messrs. Sidney Cronk & Co. He personally took no part in the preparation of the accounts. He had no reason whatever to suppose that the dividend was not being paid out of profits, or he would never have consented to it. He was so confident of the success of the company that in October, 1928, he took up additional shares, and in November, 1928, guaranteed a bank overdraft for £2,000.

Cross-examined by Mr. T. F. Davis, for Mr. Macquire, witness agreed that he never asked to see Mr. Macquire's certificate. He was satisfied that the auditors would go into everything and see that all was right. He first heard that reinstatement charges had not been inserted in the balance sheet when he returned from America in March of this year.

Questioned by Mr. Spens, K.C., on behalf of the liquidator, Mr. Hunt said he was informed early in March, 1928, that the profits for the year would be about £3,000. It was a highly satisfactory result and very welcome news to him. He appreciated that it was a figure that would have to be thoroughly tested before it could be safely acted upon. Mr. Macquire assured him that his figures with regard to work in progress were accurate, and he knew that the auditors would go into the matter. A few days before a board meeting in June, 1928, he said to Mr. Buckle, of the accountants' firm who was engaged on the profit and loss account, that the company had apparently achieved a very fine year and asked him if he was satisfied that a profit of £3,000 had been made. Mr. Buckle said that he was quite satisfied, but that he had to rely on Mr. Macquire's figures, as he could not go out and measure the work done himself. It was never discussed or suggested to him that there were any sub-contracts connected with the balance sheet at all. He did not know they existed. He agreed that it would not be right to bring into the balance sheet the amount the company was to receive for work it was doing without making allowance for payments that had to be made to sub-contractors. The matter of reinstatements he left entirely to the Accountants. At no time did he see the books, accounts or vouchers. Apart from his conversation with Mr. Buckle, he never had any discussion with anybody from the auditors' office with regard to the accounts. He had never seen Mr. Cronk until three days ago.

Mr. Justice Bennett: There is no partner? The firm is Mr. Cronk?

Mr. Hunt: I do not know. At no time did Mr. Cronk ever come to the company's offices to my knowledge. His clerks came.

Mr. George Offer, another of the respondent directors, said he was an accountant, not qualified by examination, in the employ of Messrs. Sidney Cronk & Co., and had forty years' experience with the firm. He became connected with the Westminster Company through Mr. Hunt and partly opened the books of the company and generally supervised them until he was appointed a director. He took shares in the company and was so satisfied with its progress that he recommended the shares to his friends. He took no hand in the preparation of the accounts for the balance sheet of March, 1928, as, being a director, he thought it was advisable to stand

aside so that there should be no question or suggestion of interference.

Continuing his evidence, Mr. Offer said that as a precaution which a director ought to show, he asked Mr. Macquire if he was practically certain that all the liabilities were in, pointing out to him that the profit shown was large, and if any liabilities were not included the company would have to pay income tax on that profit a year before it was made. Mr. Macquire replied that so far as he knew everything was in. Witness said he was satisfied that the profit as shown in the balance sheet was correct, because the accounts were prepared by Mr. Buckle, who was a fully-qualified Chartered Accountant, and had investigated them very closely. With regard to the G.P.O. debt, it was not considered a bad debt in 1928. It was for work done outside the ordinary contract work, and it was hoped that the G.P.O., who were giving it consideration, would pay the bill.

Cross-examined by Mr. Davis: Had he been auditing the balance sheet, he would have sent for the reinstatement invoices relating to work done up to March 31st.

If invoices had been handed to you which had been only received by the end of March, I suggest that on looking at them it would have been obvious to you that they related to an earlier period, and that there were more to come for March?—Yes.

Since you knew that there was work in progress on March 31st, it followed that reinstatements must have been accruing for the whole of March?—Yes.

Mr. Justice Bennett: Assuming that in June, 1928, you were preparing the company's profit and loss account for the year ended March 31st, 1928, would it have been obvious to you that the profit and loss account did not, or might not, include all the reinstatement liabilities up to the end of March?

Mr. Offer: Yes, I am afraid I would have to assume they were not all included.

Mr. Justice Bennett: A very frank answer.

Mr. Davis: The invoices rendered before March 31st provided the auditor with ample material to enable him to see that there was a period uncovered by them?—Yes, I think so from what I have seen since. I do not think that they were ample, but there were materials.

Cross-examined by Mr. Gover: His answers to Mr. Davis were qualified to this extent; the view he would take of the accounts would depend upon what he saw in the books, the information he obtained from responsible officials of the company, and the invoices or accounts which were available.

Mr. Offer added that everything was congenial in 1928, and that it was all suspicion now

Questioned by Mr. Spens, K.C., he said he did not consider the profits surprisingly large. He agreed that the result of the year's working depended upon the accuracy of the figure of £6,500 for the value of work in progress actually done. He did not think it necessary as a director to take steps to check the figure himself, as he relied upon Mr. Macquire, and understood that the details had been worked out and checked in the company's offices. He assumed that all the work had been done by the end of March. He also agreed that if it was a fact, as alleged by the liquidator, that accrued liabilities to sub-contractors had been omitted, the balance sheet was "utterly hopeless."

Re-examined, Mr. Offer said that when he stated that if he were auditing in June, 1928, the profit and loss account for the year ended March 31st, 1928, it would have been apparent to him that there were liabilities for reinstatements which had not been included, he meant it would have been obvious to him in the light of his present knowledge.

Mr. Justice Bennett: You have given your evidence in the very difficult circumstances of this case with great fairness and candour.

Mr. Offer: Thank you, my Lord.

Mr. Arthur Leslie Stevens, another respondent, who was not represented by Counsel, was examined by the Judge. He said he became a director in order to look after the inside working of the office, and keep the books. He had previous experience of keeping books both here and abroad, but beyond that did not represent himself as being a book-keeper. The accounts and balance sheet were considered at a board meeting on June 27th, 1928, and he relied on Mr. Macquire for the accuracy of the figures relating to work in progress and on the assurance of Mr. Offer that the auditor's figures with respect to liabilities would be correct.

Mr. Davis: When the audit was being made, did Mr. Buckle make any particular inquiries of you? He often made inquiries, but I do not recollect any particular inquiries.

Do you remember Mr. Macquire at any time suggesting that it would be well not to hurry the balance sheet?—Yes.

What reason was given?—He said he wanted to get the reinstatement accounts in.

Mr. Lionel Cohen, K.C.: When was that?—I cannot give the date; round about March 31st.

In answer to Mr. Gover, K.C., witness said he had no recollection of Mr. Buckle asking him about the position with regard to reinstatements. He might have asked for the file of reinstatement accounts.

Did he inquire of you whether that file covered all the reinstatement matters in respect of work done up to the end of March?—I have no recollection of it at all.

Do you remember a conversation with Mr. Buckle about the work in progress?—Most emphatically I have no recollection of it. He would discuss the work in progress with Mr. Macquire, not with me.

Mr. Justice Bennett said he was satisfied that the liquidator could not maintain his claim for repayment of the second sum of £200 paid to Mr. Stevens. He was prepared to hold that it was not paid, as the liquidator alleged, in respect of profits, but as a consideration to Mr. Stevens for the termination of his agreement with the company which had three years to run, and under which he was entitled to a salary of £400 a year, plus a commission on profits.

Mr. Sidney Milson Macquire, manager and secretary to the company, said he was the practical outside man, and had no accountancy experience. He relied upon Mr. Offer to look after the accountancy side of the office, that being the reason for Mr. Offer's introduction in the business. He had a discussion with Mr. Buckle as to how the work in progress should be valued, and pointed out to him that the invoice prices included all the cost of reinstatements. He sent Mr. Buckle particulars of all the work he had had to estimate, and was satisfied that Mr. Buckle had gone into them and then naturally thought his figures were right. In everything he did he had acted in perfect good faith.

With regard to the G.P.O. bad debt, his Lordship said that at the most this could only be an error of judgment, and not misfeasance, and Mr. Spens said he would not press the point against any of the respondents.

Mr. Gover, K.C. (to witness): I put it to you that you never met Mr. Buckle under any circumstances until after the end of March, 1928?—I do not agree.

Mr. Gover: I suggest that your statement is an entire fabrication.

Mr. Macquire: I beg to differ. If it was not Mr. Buckle, it was a representative of Messrs. Cronk & Co.

In further cross-examination, Mr. Macquire said he considered it the duty of the auditors to refer to the copy invoices and diary sheets to ascertain the exact value of the work done down to the end of March. He never told anybody that he had done the actual measurements himself. It was impossible for him to do so as there were so many hundreds of P.O. jobs going on and, besides, he was not responsible for that part of the work. He also denied that he ever told Mr. Buckle that there was no documentary evidence by which his (witness's) figures of the work in progress could be verified and that he would have to take his word for their accuracy.

Did you tell him that you had taken the utmost care in working out the figures and that you had taken everything into consideration, including reinstatement accounts?—Most certainly not.

In reply to Mr. Spens, K.C., witness said that in the schedule of work in progress which he sent to Mr. Buckle he deliberately intended his figures to be full invoice values. That was the arrangement with Mr. Buckle.

Irrespective of liabilities to sub-contractors?—Absolutely so.

Between the date when you sent Mr. Buckle the particulars and the date when you signed the certificate you had no discussion with him with regard to reinstatements or sub-contracts?—No.

When you signed the certificate did you not realise that the total was approximately that of the figures you supplied to Mr. Buckle?—No.

You swear that?—I do.

Mr. B. W. Shaw, a director and respondent to the summons, said he was a New Zealander and came to England in 1923. He was 24 years of age when he joined the Westminster Company. He was introduced by Mr. Macquire, his duties being those of outside supervisor. He understood that Mr. Macquire was responsible for the figure in the balance sheet of work in progress and relied upon him and the auditors for its accuracy.

Mr. Arthur Charles Buckle, of Messrs. Sidney Cronk and Co., said he was an Associate of the Institute of Chartered Accountants. He passed his final examination in November, 1927. He had been engaged in auditing books of companies where work in progress was involved but not of the same type as was under consideration here. On April 10th, 1928, he was instructed to audit the Westminster Company's books, and that was the first time he had been in the company's offices. He had never come into contact with Mr. Macquire prior to that date. He found the invoice book badly written up and had to make adjustments. That made him extra cautious. Mr. Offer took no part whatever in the audit.

Continuing his evidence, Mr. Buckle said that he found the costing records of the company quite useless, and the first step he took to verify the work in progress was to look at the sales day-book, which formed only a partial check as the whole valuation was based on measurements.

Mr. Vanneck: Did you discover anything that appeared to be incorrect in the schedules furnished to you by Mr. Macquire?—Yes, there was an item included which ought to have been deleted because the account had been rendered before March 31st, and therefore could not be work in progress.

Witness said he did not come across any documents in the company's possession which would enable him to check the value of the work in progress at the end of March, and he asked Mr. Stevens if there were any such documents. He was referred to Mr. Macquire who was responsible for the valuation. Mr. Macquire told him that the measurements had been taken at March 31st, and that the valuation was based on them. He then inquired whether he could have the working figures in order to check the ultimate results that appeared in the schedules. He understood from Mr. Macquire that these details were measurements of all classes of the company's work, and that in order to follow them he would need the technical knowledge, and bearing in mind the complications in pricing the G.P.O. work he came to the conclusion that Mr. Macquire was right and that the details would be unintelligible to him. So far as the G.P.O. contracts were concerned, Mr. Macquire said that the work done had been agreed with the G.P.O. representatives and that there was no reason for doubting the accuracy of the figures.

Did you know of any other documents or source of information which would enable you to verify the valuation of the work in progress?—No. Mr. Macquire told me there were no documents apart from his measurements.

Had you any reason to doubt the accuracy of Mr. Macquire's statements to you?—None whatever.

Witness added that during his conversation with Mr. Macquire no reference at all was made to sub-contracts, and so far as he was aware the company performed its own work. He asked Mr. Stevens for all the accounts relating to reinstatements, and gathered that he was given all the accounts that were likely to come in relating to the relevant period. Mr. Stevens said he was not aware of any other liabilities. In his conduct of the audit he never had any reason to doubt the integrity of Mr. Stevens or Mr. Macquire.

Mr. Davis (for Mr. Macquire): With the knowledge you had at the time you satisfied yourself that you had done everything you possibly could do?—Yes.

Looking back with the knowledge you have got now, would you have been satisfied?—No.

Do you think now that you were as careful as you ought to have been?

Mr. Justice Bennett disallowed the question, saying that it was one for him to determine.

In further cross-examination Mr. Buckle, in reply to Mr. Davis, said he appreciated that reinstatements were necessary, and that he understood Mr. Macquire had allowed for any liability in arriving at his work in progress valuation. They were lump sum estimates and he understood that they were reduced to allow for any possible liability.

Did you ever ask him for a list of the liabilities you thought he had deducted?—No.

Why not?—So far as I can recollect, our conversation was merely a discussion of principle and not of detail. I had been unable to verify the work in progress myself, and it would not have helped materially to have verified this.

When did you discover that reinstatements had been omitted from the balance sheet?—I do not think any discovery was made before this action was commenced.

Did you do any work on the September, 1928, accounts ?—I did.

Were the entries in the reinstatement account as they now appear ?—Yes, up to September.

Did you look at these reinstatement invoices ?—I did not personally deal with the reinstatement accounts at all.

Did you notice that there were entries relating to March ? It was staring you in the face !—I did not examine the account. The whole thing had been checked by whoever was assisting me, and I was not going through it a second time.

If anyone checked these accounts he must have seen these entries dated March ?—Yes, he must have done.

If it had been done with any care it should have been brought to your notice that there were entries relating to another period—it seriously affected your previous work ?

Mr. Justice Bennett : You wanted to find out if there had been a profit between March and September ?—Yes.

If you brought into account work done for the company in March it would not add to the profits ?—No, they would be deflated.

Mr. Davis : When you found that there was a huge loss as opposed to a profit in March, did you not look round to see how the difference came about ?—The difference was explained to me, I believe, as being contributed to by various factors which I can give you if you like.

Did it not occur to you that something might have gone wrong in your previous account ?—No.

In reply to Mr. Spens, K.C., witness agreed that apart from his checking by the sales day-book and the assurances of Mr. Macquire he took no steps to check the road or G.P.O. contracts. He had to rely upon Mr. Macquire's assurance about the measurements and that they related to work actually done at the end of March and did not include work done subsequently.

Mr. Spens : I am going to suggest to my Lord that that is not a sufficient discharge of your duties as auditor.

Questioned as to adjustments made in the G.P.O. invoices, which Mr. Spens said were generally in favour of the G.P.O. and against the company, Mr. Buckle stated that he thought he gave consideration to the question and came to the conclusion that as there were adjustments in favour of each side there was no necessity to make provision or a reserve in respect of the alterations.

Mr. Spens : I suggest that it escaped you altogether and you did not consider it at all ?—I am afraid I do not know definitely. I was quite aware it was going on, and think I must have considered it.

Mr. Sidney Cronk, F.C.A., said he carried on business at 9, Fenchurch Street, E.C., and had been in practice for nearly 50 years. He entrusted the matter of this particular audit to Mr. Buckle, who was a fully qualified Chartered Accountant, and left it entirely to him. He had no doubt whatever as to the competency and experience of Mr. Buckle to do the job properly, and he had no doubt whatever now that he had done it properly. Mr. Buckle passed his final examination with high honours and obtained the winning prize. He was a young man of exceeding promise.

In reply to Mr. Spens, K.C., he said he asked Mr. Buckle the ordinary question as to whether every care had been taken to ascertain the assets and liabilities of the company before he (Mr. Cronk) signed the balance sheet.

Mr. Gover, K.C. : Did you realise that you were solely responsible for the audit ?—I have always accepted the responsibility.

This concluded the evidence.

The concluding speeches of Counsel and the judgment of the Court (which had not been given when we went to press) will appear in our next issue.

ACCOUNTANT'S CLAIM FOR CHARGES.

In the High Court recently judgment was given in an action brought by Mr. William Mercer, F.C.A., Accountant, Salisbury Avenue, St. Albans, who claimed £154, balance of fees for professional services rendered to Mr. Charles E. Hunt, shellac bleacher and merchant, of Oxford Street, Stepney, from October, 1927, to December, 1930. The total charge was £204, and £50 had been paid on account.

For the defence it was alleged that the charges were excessive and unnecessary. Defendant further alleged that in breach of his duty to advise as to the proper system of booking to be adopted and the amounts due from defendant in respect of income tax, plaintiff and his staff performed their work inaccurately and wrongly advised defendant that he was liable for tax to an amount of £600.

The sum actually owing was afterwards found to be only £47. Defendant pleaded that plaintiff had already been sufficiently paid, but brought a further £50 into Court as being sufficient to satisfy the claim.

Sir Francis Newbolt, K.C., Official Referee, giving judgment, said that after consulting his assessor he found that the proper charge for plaintiff's services was £151 13s. instead of £204 8s. 3d.

The evidence showed that during a long period of years the defendant had no proper books and was in the habit of defrauding the Revenue by making false declarations as to his income. He had two sources of income in two different districts, and instead of making one declaration stating his total income he made declarations in each district, declaring that each source of income was his total income. He thus obtained the well known allowances twice over. At defendant's request, Mr. Hunneman, a member of plaintiff's staff, disclosed to the Inspector of Taxes the true position with the result that it was found that £550 was owing. The Inspector suggested that £600 should be paid to settle the matter, but defendant could not find the money.

After defendant had discharged Mr. Mercer and employed another accountant, it was found that certain allowances that had been overlooked reduced the £550 to a much smaller sum.

There was no foundation for the allegations of professional negligence on the part of the plaintiff, and he (Sir Francis) entirely accepted plaintiff's evidence. From defendant's evidence, he gathered that he (defendant) was badly advised before Mr. Mercer's time, and that when he swore that in doing what was known in those Courts as defrauding the Revenue he was not conscious of doing anything wrong. He appeared to be a man who could not understand the mathematical side of his business and really thought that there was nothing reprehensible in signing a false declaration. There would be judgment for plaintiff for £101 13s., with costs.

Reviews.

Accountants' and Auditors' Diary, 1932. *London: T. Whittingham & Co., Limited, 50, Southwark Bridge Road, S.E.1, and 35, Bucklersbury, E.C.4. (Price 6s. to 12s. 6d. net, according to size and binding.)*

This is a diary specially designed for the use of accountants. Its value and usefulness have been proved by experience, with the result that it becomes more popular year by year. In the body of the diary provision is made for setting out the details of work done day by day, and at the end there is a time summary. The summary is specially ruled to enable the time for the whole year, or any shorter period, to be summarised under the client's name, additional columns being provided for working out the total time and extending the charges. In the cloth bound editions the summary is enlarged and divided into alphabetical sections for convenience of reference. The editorial matter is specially selected so as to be of practical use to accountants in carrying out their duties from day to day, and comprises the main provisions of the Companies Act, 1929, so far as they affect accountants, and also the audit provisions relating to companies incorporated under special Acts of Parliament. Special attention has been given to Income Tax and Surtax, full particulars (including the alterations effected by the second Finance Act of 1931) being supplied in a form readily accessible and without unnecessary detail. Full information is likewise supplied with regard to deeds of arrangement, stamp duties, national health and unemployment insurance, &c. The diary is published in a number of different sizes and bindings suitable for the varying requirements of principals and clerks.

The Students' Chart of Bankruptcy and Deeds of Arrangement. *By George H. Johnson, A.S.A.A., and John A. Edwards, A.C.A. London: Gee & Co. (Publishers), Limited, 8, Kirby Street, E.C.1. (Price 5s. net.)*

This is a very useful publication, not only to students but also to practitioners. The author has set out in the form of charts or trees particulars of the various stages in the administration of a bankrupt's estate. For instance, under the head of Trustees there are grouped in their proper order the various steps which the Trustee has to take and the times when they have to be taken; also particulars with regard to the fixing of his remuneration, and meetings to be summoned by him. Other charts tabulate the provisions respecting the audit of his accounts, his relation to the Committee of Inspection, and the procedure with regard to proofs of debt, while there is set out in another table the order of application of the assets distinguishing secured creditors, preferential debts, and deferred debts, &c. The information is comprehensive and well arranged.

Income Tax Law and Practice. *5th Edition. By Cecil A. Newport and Ronald Staples. London: Sweet & Maxwell, Limited, 2 and 3, Chancery Lane, W.C.2. (354 pp. Price 10s. 6d. net.)*

Mr. Newport's book is now well known. It deals with numerous points that are not to be found readily in other publications. The information is brief and clearly expressed, and the whole field of Income Tax and Surtax is covered. The new edition is compiled in the same form as before, and embodies all legislation up to the passing of the first Finance Act of this year. The book was issued before the Finance (No. 2) Act, 1931, was passed, but a short supplement is included explaining briefly the alterations which were effected by that Act.

Book-Keeping and Accounts. *16th Edition. By Cropper, Morris and Fison, Chartered Accountants. London: Macdonald & Evans, 8, John Street, Bedford Row, W.C.2. (996 pp. Price 7s. net.)*

The earlier editions of this publication were produced by Mr. L. Cuthbert Cropper, F.C.A., but he died before the present edition had been completed, and the work was taken up and carried through by Mr. F. D. Morris, F.C.A., and Mr. A. K. Fison, F.C.A., with whom he was in partnership. Mr. Cropper's book is one of the most practical works on the subject of book-keeping, the lines followed being those used in actual business affairs as distinct from the more theoretical methods adopted by many authors. Numerous examples and rulings are given in illustration of the text, and there is an appendix of exercises, giving questions and answers from which the student will derive useful assistance.

The Law Relating to Profits Available for Dividends. *By Edward Westby-Nunn, B.A., LL.B. London: Gee & Co. (Publishers), Limited, 8, Kirby Street, E.C.1. (32 pp. Price 1s. net.)*

In this little pamphlet the author has summarised in brief form the legal decisions bearing upon the subject of profits and dividends. The information is highly condensed, but gives a good general view of the law on the subject.

Income Tax. *11th Edition. By Ernest E. Spicer, F.C.A., and E. C. Pegler, F.C.A., Chartered Accountants. London: H.F.L. (Publishers), Limited, 17, Ironmonger Lane, E.C.2. (498 pp. Price 10s. 6d. net.)*

The new edition of this book has been edited by Mr. H. A. R. J. Wilson, F.S.A.A., who has taken the opportunity to recast the text in addition to bringing it up to date. It covers all alterations in the law up to the passing of the first Finance Act, 1931, but at the time of publication the second Finance Act of that year had not been passed and a supplement is included showing the changes which that Act introduced. The subject is dealt with under all the different schedules, and there are separate chapters on the adjustment of Profit and Loss Accounts, the setting off of losses in one trade against the profits in another, the assessment of Surtax and claims for repayment and Dominion Income Tax relief. The matter is well arranged, and numerous examples are given showing how the computations should be prepared.

The Companies' Diary and Agenda Book. *By Herbert W. Jordan. London: Jordan & Sons, Limited, Chancery Lane, W.C.2. (Price 4s. net.)*

Company secretaries will find much useful information in this diary, which is specially designed for their use. Amongst other particulars supplied are notes on Company Law and Practice in many of the Colonies and foreign countries. A number of specimen forms relating to the affairs of Joint Stock Companies are also included, together with postal and other information.

The Gold Standard and the Crisis. *By C. Ralph Curtis, B.Sc.(Econ.). London: Charles Griffin & Co., Limited, 42, Drury Lane, W.C.2. (114 pp. Price 2s. net.)*

At the present time a publication on the gold standard is particularly appropriate, and those who wish to obtain in concise form a general view of the subject will find in this little book what they require.

A Practical Guide to the Land Value Tax. *By E. Westby-Nunn, B.A., LL.B., Barrister-at-Law. London: M.B.E. (Tutors), Limited, 1, Budge Row, E.C.4. (40 pp. Price 1s. net.)*

The subject of the Land Value Tax is probably not quite so important now as it appeared likely to be before the general election, but the brief synopsis which Mr. Westby-Nunn has given in this pamphlet is nevertheless well worthy of perusal.

Taxation in Holland, Switzerland, Spain and Poland. *London: Sweet & Maxwell, Limited, 2 and 3, Chancery Lane, W.C.2.* (120 *pp. Price 5s. 6d.*)

A brief review of the Taxation Laws of the countries named in the title is embodied in this publication. The author in each case is a qualified legal practitioner in the country with whose laws he deals, and the information may therefore be regarded as reliable.

The Elements of Commercial Law. *By H. W. Disney, B.A., Barrister-at-Law. London: Macdonald and Evans, 8, John Street, Bedford Row, W.C.1.* (254 *pp. Price 3s. 6d. net.*)

In this edition, which has been revised by Mr. R. Samuel, M.A., Barrister-at-Law, some rearrangement of the text has been made, separate parts being devoted to Principal and Agent and to Partnership, while a new part has been added dealing with Arbitration. The book is not intended for lawyers or for law students, but for business men and commercial students in schools and colleges. It is accordingly written in simple form and classified under convenient headings. The law relating to contracts, companies, bankruptcy, sale of goods, negotiable instruments, and insurance are all brought within its scope.

HOW THE NATIONAL DEBT IS HELD.

From time to time proposals are lightly put forward in regard to the National Debt, advocating the forcible reduction of capital or interest. Those who make these proposals appear to assume that the debt is held only by rich people. Some indication of how far this assumption is correct may be gathered from the following approximate figures showing how the National Debt is in fact held. These figures have been extracted from an article by Mr. A. M. Samuel, M.P. (formerly Financial Secretary to the Treasury) which appeared recently in the public Press.

	£ Millions.
The U.S. Government holds	904
The Allied Governments hold	135
British Government Departments hold ..	750
Victory Bonds held by Commissioners of National Debt	117
Held by the Post Office Savings Bank and the Trustee Savings Banks	500
Held as cover for Bank Notes	275
Held by insurance companies for the protection and benefit of policy holders ..	350
Reserves, provident and other funds of railway companies	80
Held by executors of wills, and by trustees, for widows, children, dependants, and in trust for marriage settlements, for charitable trusts, friendly societies, endowments of churches, chapels, hospitals, universities, schools, institutions for education and learning, trade union funds, and reserves of trading concerns	1,500
Held by overseas Britons and foreigners who have invested in various British Government loans; an unknown amount, but let us say	350
Owned by holders of National Savings Certificates and Bonds	373
Holdings by British trading firms and finance houses of the Funded and Floating Debt which become part of the currency of industry and finance and provide the active working material of British commerce	200
The balance of the National Debt is held as investments of their savings by or on behalf of 15,000,000 of British subjects (rentiers), of whom 14,000,000 have a taxable income of less than 10 guineas a week	1,996
Total National Debt outstanding March 31st, 1931 .. (Millions)	£7,530

CHARTERED INSTITUTE OF SECRETARIES.

The Annual Meeting of the Chartered Institute of Secretaries was held on November 23rd, the President (Mr. Edward Wilshaw) occupying the chair.

The following are extracts from the Report of the Council submitted at the meeting.

MEMBERSHIP.

During the year ended August 31st the net increase in membership was 199. On that date the number on the Roll was 6,645, of whom 2,296 were Fellows and 4,349 were Associates. 331 new members were elected, and seven former members were readmitted to membership during the year. The number of members whose membership ceased through death or other cause was 139.

EXAMINATIONS.

The results of the examinations held in December, 1930, and March and June, 1931, were as follows:—

	Candidates	Passed
December, 1930.		
Preliminary	156	78
Intermediate	999	379
Final	461	197
March, 1931.		
Preliminary	38	25
June, 1931.		
Preliminary	273	157
Intermediate	1,253	504
Final	628	250
Totals.		
Preliminary	467	260
Intermediate	2,252	883
Final	1,089	447
	3,808	1,590

At the examination centres overseas there has again been a specially gratifying increase of examinees in South Africa, where 538 entered during the year.

STUDENTS.

The number of students, including articled clerks, registered during the year was 1,518. The total number on the Students' Register at August 31st was 8,025.

SCHOOLS OF COMMERCE.

The experimental arrangement whereby a pass in the sessional examinations following the classes held in the evening in Economics, Accountancy and Mercantile Law, is recognised in lieu of a pass in the same subjects of the

Intermediate examination continues to operate in courses provided for the Institute examinations for another year expiring in June, 1932, at City of London College; City of Birmingham Commercial College; Bradford Technical College; Cardiff Technical College; Glasgow and West of Scotland Commercial College; Heriot-Watt College, Edinburgh; Huddersfield Technical College; Leeds College of Commerce; Liverpool City School of Commerce; Manchester Municipal High School of Commerce; Newcastle-upon-Tyne Municipal College of Commerce; Regent Street Polytechnic (London). The concession has been extended also for next session to the Hull College of Commerce for the like period.

EXAMINATION SYLLABUS.

With a view to meeting more fully the needs of the various phases of work or business in which candidates at the Institute examinations are engaged, the syllabus for the subject of Secretarial Practice, Part II (*i.e.*, the law and conduct of meetings), in the Final examination has been subdivided still further.

STUDENTS' SOCIETIES.

In order to co-ordinate the work of the various Students' Societies, the Council has approved the formation of a Union of Chartered Secretaries' Students Societies.

EXHIBITION OF MODERN OFFICE APPLIANCES.

With a view to offering members an opportunity of studying some of the uses of modern office devices, the Council arranged an exhibition at the Institute from Monday to Friday, June 22nd to 26th, inclusive. The special feature of the exhibition was the fact that each operator was engaged in carrying out an ordinary daily operation of the particular machine. In this way visitors were enabled to acquire a good idea of the operating possibilities of a particular machine. During the week Mr. W. Desborough, O.B.E., of the Treasury, gave an address on "Considerations Governing the Modernisation of the Office."

DISCIPLINE.

On reports from the Disciplinary Committee, the Council has considered four cases in which complaint has been received of members of the Institute making public solicitation for professional work. In each case satisfactory assurance was obtained.

BENEVOLENT FUND.

During the year 62 applications were received, of which 55 were assisted from the Fund. This figure compares with 44 cases assisted in the previous year. Periodical allowances were continued in the past year in 27 cases. Allowances were also given in four further cases, which include one widow of a member. Lump sum grants were made in 24 cases.

The sum expended in periodical allowances, in lump sum grants and in educational benefits, totalled £1,339 11s. 4d. During the year contributions of £1,372 3s. 2d. were received from 2,888 members.

The limited funds available frequently force the Committee to give less than really adequate assistance. For obvious reasons particulars of the applications received cannot be published, but the Committee feel that if known they would arouse the utmost sympathy and greater willingness on the part of those who at present do not make contributions to the Fund.

Owing to the acute industrial depression at the present time the calls on the Fund for assistance are increasing, and the Committee is anxiously hoping for an increase in annual contributions to enable them to meet the situation in a spirit of careful generosity worthy of the Institute.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Scottish Branch—Examinations.

The examinations held at the Glasgow Centre in the first week of November were under the supervision of Mr. James Paterson, Secretary of the Branch, who had the assistance of Mr. R. T. Dunlop, F.S.A.A., Mr. W. Hill Jack, F.S.A.A., and Mr. J. Hawthorne Paterson, A.S.A.A.

Scottish Branch—Students' Societies.

Arrangements have been made for a visit to Aberdeen by the President, Mr. J. Stewart Seggie, and the Secretary, when Mr. Seggie will give an address to the members of the Aberdeen and District Students' Society.

The Glasgow Incorporated Accountants' Golf Club, along with members of the Glasgow Students' Society, will hold a social meeting on 5th prox., when golf prizes will be presented.

Scottish Municipal Affairs.

At one time the Scottish Branch had a large representation on Town Councils and other public authorities in Scotland. Two Presidents of the Scottish Branch were Provosts of their respective towns—Mr. Dugald Campbell was Provost of Greenock and Mr. Borthwick Watson of Falkirk. Mr. Watson was also an honorary Sheriff-Substitute of Stirlingshire. At present the Scottish Branch has three members of Town Councils—Mr. Wm. J. Wood on the Perth Town Council, of which burgh he has also been a magistrate, Mr. Festus Moffat is a town councillor and has recently been elected Honorary Treasurer of the Burgh of Falkirk, while Mr. James Paterson, Secretary of the Scottish Branch, is a member of the Town Council of Greenock.

A Glasgow Parish Church.

St. George's Parish Church is one of the few surviving old Glasgow city churches which remain in the centre of the city. Its next door neighbours are the Stock Exchange, the Commercial College, the Hall of the Faculty of Procurators, and the Scottish Academy of Music. In former times its membership included influential members of the professions represented by those bodies, and this, notwithstanding changes in residential areas from the city to the suburbs, is still characteristic of this church. Recently the need for extensive and much needed renovation and redecoration was forced upon the congregation, but this might have been indefinitely delayed but for the great generosity of Mr. W. Davidson Hall, F.S.A.A., and his sisters, who undertook to make themselves responsible for the cost of the work. This work has now been completed, and the church was reopened and rededicated on September 6th. This gift was made in loving remembrance of Mrs. W. Davidson Hall, a generous supporter and worker in the church, and of the late Mr. John Hall, for many years session clerk. Mr. W. Davidson Hall is President of the Glasgow Incorporated Accountants' Students' Society, and the donor of the "W. D. Hall Fund" for students.

Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B. :—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Session Cases* (*Scotland*); S.L.T., *Scots Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace* (*England*); L.G.R., *Knight's Local Government Reports*; B.&C.R., *Bankruptcy and Company Cases*.

The other abbreviations used in modern reports are H.L., House of Lords; A.C., Appeal Court (House of Lords and Privy Council); C.A., Court of Appeal; Ch., Chancery Division; K.B., King's Bench Division; P., Probate, Divorce and Admiralty Division; C.S., Court of Session (Scotland); J., Mr. Justice (King's Bench or Chancery); L.J., Lord Justice; L.C., Lord Chancellor; M.R., Master of the Rolls; N.I., Northern Ireland; P., President of Probate, Divorce and Admiralty.]

COMPANY LAW.

Ward v. British Oak Insurance Company, Limited.

Insurance Against Third-Party Risks.

By sect. 1 (1) of the Third Parties (Rights Against Insurers) Act, 1930, where under any contract of insurance a company is insured against liabilities to third parties which it may incur, then in the event of a winding up order being made, or a resolution for a voluntary winding up being passed with respect to it, if either before or after that event such liability is incurred by the company, its rights against the insurer shall be transferred to and vest in the third party to whom the liability was so incurred.

It was held by the Court of Appeal that the Act does not apply to rights that have accrued as liabilities incurred before the passing of the Act.

(C.A.; (1931) W.N., 229.)

EXECUTORSHIP LAW AND TRUSTS.

In the Goods of Smith.

Signature to Will.

Where a printed form in which the disposition part of the will was written on the second and third pages, whilst the execution appeared on the first page, Bateson (J.) admitted it to probate as the correct way of reading the document was to begin with page 2 and to end with the signature on page 1.

P.; (1931) L.J.N., 252.)

In the Estate of John Clifton.

Incapacity of Executor.

By sect. 23 (2) of the Administration of Estates Act, 1925, the trustees of a settlement, or any person beneficially interested thereunder, may apply to the Court for an order appointing a special or additional personal representative in respect of the settled land, and such special or additional personal representative will be in the same position as if representation had originally been granted to him alone in place of the original personal representative limited to the settled land.

Where a special executor became incapable, Bateson (J.) revoked the grant of probate limited to settled land, and under sect. 23 (2) appointed a new special personal representative to act with the continuing special executor.

(P.; (1931) L.J.N., 252.)

MISCELLANEOUS.

Greenwood v. Martin's Bank.

Signature on Cheques Forged by Customer's Wife.

The Court of Appeal held that where a bank had honoured cheques which were forged by the customer's wife, and the customer with knowledge of the forgery took no action until after his wife's death, that although ratification had no applicability to a forged signature, the customer was estopped from alleging the forgeries because his silence had caused the bank to lose its right of action against the forger.

(C.A.; (1931) L.J.N., 257.)

Batts Combe Quarry Company v. Barclays Bank Limited.

Inquiry of Bank as to Customer's Stability.

Where for business purposes inquiry is made of a bank as to the stability of a customer of the bank, the only duty, if any, owed by the bank to the inquirer is a duty, in giving a reply, not to be negligent.

(K.B.; (1931) 48 T.L.R., 4.)

REVENUE.

Commissioners of Inland Revenue v. Aberdeen Medico-Chirurgical Society.

Income Tax and Scientific Societies.

The Court of Session held that this society was not entitled to exemption conferred by Rule 1 (*e*) of No. vi. of Schedule A of the Income Tax Act, 1918, because the pre-eminent purpose for which it existed was for the benefit and professional interests of its members while the public benefit was only indirect or consequent.

(C.S.; (1931) S.L.T., 579.)

Hamilton v. Commissioners of Inland Revenue.

Deduction of Tax from Dividend.

Rule 20 of the All Schedules Rules to the Income Tax Act, 1918, provides that the profits or gains to be charged on a company shall be computed in accordance with the provisions of the Act on "the full amount of the same before any dividend thereof is made" and that the company "paying such dividend shall be entitled to deduct the tax appropriate thereto."

It was held that by "the tax appropriate thereto" was meant the tax at the standard rate on the gross amount of the dividend paid by the company and not a proportionate part of the tax paid by the company in the year in which the dividend was paid in respect of its profits or gains, and, therefore, that in making the return of his total income for the purpose of sur-tax the shareholder must include the gross amount of the dividend, and not the proportionate part of the total income on which the company had borne tax for the year of assessment in which the profits distributed were made.

(C.A.; (1931) 2 K.B., 495.)